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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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2003 VAC Supplement includes final regulations published through *Virginia Register* Volume 19, Issue 24, dated August 11, 2003). 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 1. Administration			
1 VAC 55-10-10	Amended	20:5 VA.R. 454	12/17/03
1 VAC 55-10-20	Amended	20:5 VA.R. 454	12/17/03
1 VAC 55-10-30	Amended	20:5 VA.R. 454	12/17/03
1 VAC 55-20-320 emer	Amended	19:25 VA.R. 3829	10/1/03-9/30/04
Title 2. Agriculture			
2 VAC 20-30	Erratum	20:1 VA.R 39	--
2 VAC 5-325-10 through 2 VAC 5-325-120	Added	20:9 VA.R. 886	12/15/03
2 VAC 5-360-10 through 2 VAC 5-360-100	Amended	20:9 VA.R. 889	2/11/04
2 VAC 5-360-110 through 2 VAC 5-360-140	Repealed	20:9 VA.R. 889	2/11/04
Title 4. Conservation and Natural Resources			
4 VAC 15-30-40	Amended	19:25 VA.R. 3780	7/30/03
4 VAC 20-490-35	Added	20:6 VA.R. 584	11/1/03
4 VAC 20-490-40	Amended	20:6 VA.R. 584	11/1/03
4 VAC 20-490-45	Added	20:6 VA.R. 584	11/1/03
4 VAC 20-620-30	Amended	20:4 VA.R. 342	10/15/03
4 VAC 20-620-40	Amended	20:4 VA.R. 342	10/15/03
4 VAC 20-650-10 through 4 VAC 20-650-40	Amended	20:6 VA.R. 585	11/1/03
4 VAC 20-720-20	Amended	20:6 VA.R. 585	11/1/03
4 VAC 20-720-40	Amended	20:6 VA.R. 586	11/1/03
4 VAC 20-720-40 through 4 VAC 20-720-80	Amended	20:4 VA.R. 344-346	10/8/03
4 VAC 20-720-50 through 4 VAC 20-720-90	Amended	20:6 VA.R. 587-588	11/1/03
4 VAC 20-752-20	Amended	19:25 VA.R. 3780	7/23/03
4 VAC 20-950-46	Amended	20:6 VA.R. 589	11/1/03
4 VAC 20-950-47	Amended	20:6 VA.R. 589	11/1/03
4 VAC 20-950-48	Amended	20:6 VA.R. 589	11/1/03
4 VAC 20-1070-10 through 4 VAC 20-1070-50	Added	19:25 VA.R. 3781	8/1/03
4 VAC 25-31 (Forms)	Amended	20:2 VA.R. 135	--
4 VAC 25-31 (Forms)	Amended	20:5 VA.R. 487	--
4 VAC 25-130 (Forms)	Amended	20:1 VA.R 33	--
Title 6. Criminal Justice and Corrections			
6 VAC 20-171-10	Amended	20:3 VA.R. 214	11/19/03
6 VAC 20-171-20	Amended	20:3 VA.R. 217	11/19/03
6 VAC 20-171-30	Amended	20:3 VA.R. 217	11/19/03
6 VAC 20-171-40	Repealed	20:3 VA.R. 217	11/19/03
6 VAC 20-171-50 through 6 VAC 20-171-130	Amended	20:3 VA.R. 217-221	11/19/03
6 VAC 20-171-140	Repealed	20:3 VA.R. 221	11/19/03
6 VAC 20-171-150	Repealed	20:3 VA.R. 222	11/19/03
6 VAC 20-171-170 through 6 VAC 20-171-200	Amended	20:3 VA.R. 222-223	11/19/03
6 VAC 20-171-220	Amended	20:3 VA.R. 224	11/19/03
6 VAC 20-171-230	Amended	20:3 VA.R. 225	11/19/03
6 VAC 20-171-240	Amended	20:3 VA.R. 226	11/19/03
6 VAC 20-171-250 through 6 VAC 20-171-280	Amended	20:3 VA.R. 227-229	11/19/03
6 VAC 20-171-300	Amended	20:3 VA.R. 230	11/19/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 20-171-310	Amended	20:3 VA.R. 231	11/19/03
6 VAC 20-171-320	Amended	20:3 VA.R. 232	11/19/03
6 VAC 20-171-325	Repealed	20:3 VA.R. 233	11/19/03
6 VAC 20-171-330	Repealed	20:3 VA.R. 233	11/19/03
6 VAC 20-171-340	Repealed	20:3 VA.R. 233	11/19/03
6 VAC 20-171-350 through 6 VAC 20-171-400	Amended	20:3 VA.R. 234-241	11/19/03
6 VAC 20-171-420	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-430	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-440	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-460	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-480	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-500	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-510	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-540	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-171-560	Amended	20:3 VA.R. 241	11/19/03
6 VAC 20-190	Erratum	20:8 VA.R. 850	--
6 VAC 20-190-10	Amended	20:4 VA.R. 346	12/3/03
6 VAC 20-190-40	Amended	20:4 VA.R. 347	12/3/03
6 VAC 20-190-60	Amended	20:4 VA.R. 347	12/3/03
6 VAC 20-190-90	Amended	20:4 VA.R. 347	12/3/03
6 VAC 20-190-100	Amended	20:4 VA.R. 347	12/3/03
6 VAC 20-190-120	Amended	20:4 VA.R. 347	12/3/03
6 VAC 20-190-150	Amended	20:4 VA.R. 348	12/3/03
6 VAC 20-190-160	Amended	20:4 VA.R. 348	12/3/03
6 VAC 20-190-170	Amended	20:4 VA.R. 348	12/3/03
6 VAC 20-200	Repealed	20:4 VA.R. 348	12/3/03
6 VAC 20-220-10 through 6 VAC 20-220-80	Added	20:4 VA.R. 348-350	12/3/03
6 VAC 20-230-10 through 6 VAC 20-230-99 emer	Added	20:9 VA.R. 905-915	11/12/04-1/11/05
Title 8. Education			
8 VAC 20-70-10	Amended	20:7 VA.R. 656	1/14/04
8 VAC 20-70-30	Amended	20:7 VA.R. 657	1/14/04
8 VAC 20-70-40	Amended	20:7 VA.R. 657	1/14/04
8 VAC 20-70-70	Amended	20:7 VA.R. 657	1/14/04
8 VAC 20-70-80	Amended	20:7 VA.R. 657	1/14/04
8 VAC 20-70-100 through 8 VAC 20-70-170	Amended	20:7 VA.R. 657-658	1/14/04
8 VAC 20-70-190	Amended	20:7 VA.R. 658	1/14/04
8 VAC 20-70-200	Amended	20:7 VA.R. 658	1/14/04
8 VAC 20-70-210	Amended	20:7 VA.R. 658	1/14/04
8 VAC 20-70-220	Amended	20:7 VA.R. 658	1/14/04
8 VAC 20-70-230	Amended	20:7 VA.R. 658	1/14/04
8 VAC 20-70-235	Added	20:7 VA.R. 658	1/14/04
8 VAC 20-70-240 through 8 VAC 20-70-270	Repealed	20:7 VA.R. 658	1/14/04
8 VAC 20-70-280	Amended	20:7 VA.R. 658	1/14/04
8 VAC 20-70-290	Amended	20:7 VA.R. 659	1/14/04
8 VAC 20-70-300	Amended	20:7 VA.R. 659	1/14/04
8 VAC 20-70-340 through 8 VAC 20-70-380	Amended	20:7 VA.R. 659-660	1/14/04
8 VAC 20-70-390	Repealed	20:7 VA.R. 660	1/14/04
8 VAC 20-70-400 through 8 VAC 20-70-440	Amended	20:7 VA.R. 660	1/14/04
8 VAC 20-70-460	Amended	20:7 VA.R. 660	1/14/04
8 VAC 20-70-470	Amended	20:7 VA.R. 660	1/14/04
8 VAC 20-70-510	Amended	20:7 VA.R. 660	1/14/04
8 VAC 20-70-520	Repealed	20:7 VA.R. 660	1/14/04
8 VAC 20-70-525	Added	20:7 VA.R. 660	1/14/04
8 VAC 20-70-530 through 8 VAC 20-70-1510	Repealed	20:7 VA.R. 660	1/14/04
8 VAC 20-680-10 emer	Added	20:7 VA.R. 675	11/7/03-11/6/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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Title 9. Environment			
9 VAC 5-10-20	Amended	20:6 VA.R. 590	1/1/04
9 VAC 5-40	Erratum	19:25 VA.R. 3844	--
9 VAC 5-40-5800	Amended	20:8 VA.R. 808	1/29/04
9 VAC 5-40-5810	Amended	20:8 VA.R. 808	1/29/04
9 VAC 5-40-5820	Amended	20:8 VA.R. 810	1/29/04
9 VAC 5-40-5822	Amended	20:8 VA.R. 810	1/29/04
9 VAC 5-40-5824	Amended	20:8 VA.R. 811	1/29/04
9 VAC 5-40-5850	Amended	20:8 VA.R. 811	1/29/04
9 VAC 5-40-5855	Amended	20:8 VA.R. 811	1/29/04
9 VAC 5-40-5860	Amended	20:8 VA.R. 811	1/29/04
9 VAC 5-40-5870	Amended	20:8 VA.R. 811	1/29/04
9 VAC 5-40-5880	Amended	20:8 VA.R. 812	1/29/04
9 VAC 5-40-5890	Amended	20:8 VA.R. 812	1/29/04
9 VAC 5-40-5910	Amended	20:8 VA.R. 813	1/29/04
9 VAC 5-40-5920	Amended	20:8 VA.R. 813	1/29/04
9 VAC 20-80-150	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-160	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-170	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-180	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-190	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-205	Added	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-210	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-240	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-250	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-260	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-270	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-280	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-300	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-310	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-330	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-340	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-360	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-370	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-460	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-485	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-500	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-510	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-520	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-530	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-550	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-570	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-580	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-600	Repealed	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-620	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-640	Added	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-650	Added	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-670	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-730	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-740	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-760	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-770	Repealed	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-780	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-80-790	Amended	19:25 VA.R. 3782	9/24/03
9 VAC 20-170-70	Added	20:3 VA.R. 242	11/19/03
9 VAC 20-170-195	Added	20:3 VA.R. 243	11/19/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-260	Erratum	19:26 VA.R. 3926	--
9 VAC 25-260-5 through 9 VAC 25-260-30	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-50	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-140	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-150	Repealed	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-155	Amended	20:9 VA.R. 890	2/12/04
9 VAC 25-260-170	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-190 through 9 VAC 25-260-240	Repealed	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-300	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-310	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-320	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-340	Repealed	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-380 through 9 VAC 25-260-450	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-415	Added	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-260-470 through 9 VAC 25-260-540	Amended	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-280-10 through 9 VAC 25-280-90	Added	19:25 VA.R. 3785	2/12/04 *
9 VAC 25-790-10 through 9 VAC 25-790-1000	Added	20:9 VA.R. 891	2/12/04
Title 10. Finance and Financial Institutions			
10 VAC 5-200-90	Added	20:2 VA.R. 128	9/11/03
Title 11. Gaming			
11 VAC 10-20-410 through 11 VAC 10-20-417 emer	Added	19:26 VA.R. 3913-3919	8/13/03-8/12/04
11 VAC 10-130-77	Amended	20:4 VA.R. 350	10/14/03
11 VAC 10-150-130	Amended	20:4 VA.R. 351	11/17/03
Title 12. Health			
12 VAC 5-218-10 through 12 VAC 5-218-60	Added	19:26 VA.R. 3911	10/8/03
12 VAC 5-220-200	Amended	20:2 VA.R. 129	11/5/03
12 VAC 5-400-10 through 12 VAC 5-400-90	Repealed	20:6 VA.R. 597	12/31/03
12 VAC 5-407-10 through 12 VAC 5-407-120	Added	19:26 VA.R. 3911	10/8/03
12 VAC 5-550-5	Added	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-10	Repealed	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-30	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-40	Repealed	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-70	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-90 through 12 VAC 5-550-120	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-125	Added	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-130	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-140	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-150	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-190	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-200	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-210	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-230 through 12 VAC 5-550-260	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-280 through 12 VAC 5-550-330	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-350 through 12 VAC 5-550-410	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-430 through 12 VAC 5-550-470	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-510	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-550-520	Amended	19:26 VA.R. 3912	10/8/03
12 VAC 5-581	Repealed	20:9 VA.R. 891	2/12/04
12 VAC 30-40-100	Amended	20:4 VA.R. 351	12/3/03
12 VAC 30-40-140	Amended	20:4 VA.R. 351	12/3/03
12 VAC 30-40-240	Amended	20:4 VA.R. 351	12/3/03
12 VAC 30-40-280	Amended	20:4 VA.R. 351	12/3/03

* Notice of effective date published in 20:9 VA.R. 890.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-40-290	Amended	20:4 VA.R. 351	12/3/03
12 VAC 30-50-10	Amended	20:1 VA.R. 25	10/22/03
12 VAC 30-50-20	Amended	20:1 VA.R. 26	10/22/03
12 VAC 30-50-50	Amended	20:1 VA.R. 26	10/22/03
12 VAC 30-50-60	Amended	20:1 VA.R. 27	10/22/03
12 VAC 30-50-120	Amended	20:1 VA.R. 27	10/22/03
12 VAC 30-50-130	Amended	20:7 VA.R. 661	2/1/04
12 VAC 30-50-140	Amended	20:1 VA.R. 27	10/22/03
12 VAC 30-50-140	Amended	20:1 VA.R. 29	10/22/03
12 VAC 30-50-150	Amended	20:1 VA.R. 30	10/22/03
12 VAC 30-50-210 emer	Amended	20:8 VA.R. 836	1/4/04-1/3/05
12 VAC 30-50-530	Amended	20:1 VA.R. 28	10/22/03
12 VAC 30-50-226	Amended	20:7 VA.R. 661	2/1/04
12 VAC 30-50-420	Amended	20:7 VA.R. 664	2/1/04
12 VAC 30-50-430	Amended	20:7 VA.R. 664	2/1/04
12 VAC 30-50-510	Amended	20:7 VA.R. 667	2/1/04
12 VAC 30-60-61	Amended	20:7 VA.R. 669	2/1/04
12 VAC 30-60-143	Amended	20:7 VA.R. 669	2/1/04
12 VAC 30-60-147	Amended	20:7 VA.R. 673	2/1/04
12 VAC 30-70-201	Amended	20:5 VA.R. 455	1/4/04
12 VAC 30-70-291 emer	Amended	19:26 VA.R. 3920	8/13/03-8/12/04
12 VAC 30-70-301 emer	Amended	19:26 VA.R. 3921	8/13/03-8/12/04
12 VAC 30-70-331 emer	Amended	19:26 VA.R. 3922	8/13/03-8/12/04
12 VAC 30-70-425	Added	20:8 VA.R. 814	1/28/04
12 VAC 30-70-426	Added	20:8 VA.R. 814	1/28/04
12 VAC 30-80-20	Amended	20:8 VA.R. 815	1/28/04
12 VAC 30-80-30	Amended	20:8 VA.R. 817	1/28/04
12 VAC 30-80-40	Amended	20:2 VA.R. 132	11/6/03
12 VAC 30-80-40 emer	Amended	20:8 VA.R. 839	1/4/04-1/3/05
12 VAC 30-120-350 emer	Amended	20:8 VA.R. 843	12/4/03-12/3/04
12 VAC 30-120-370 emer	Amended	20:8 VA.R. 845	12/15/03-12/14/04
12 VAC 30-120-380 emer	Amended	20:8 VA.R. 847	12/15/03-12/14/04
12 VAC 30-120-420 emer	Amended	20:8 VA.R. 847	12/15/03-12/14/04
12 VAC 30-120-700	Amended	19:25 VA.R. 3786	10/1/03
12 VAC 30-120-710	Amended	19:25 VA.R. 3789	10/1/03
12 VAC 30-120-720	Amended	19:25 VA.R. 3789	10/1/03
12 VAC 30-130-550	Repealed	20:7 VA.R. 673	2/1/04
12 VAC 30-130-565	Amended	20:7 VA.R. 673	2/1/04
12 VAC 30-130-570	Repealed	20:7 VA.R. 673	2/1/04
12 VAC 30-130-1000 emer	Added	20:8 VA.R. 840	1/4/04-1/3/05
12 VAC 30-135-10 through 12 VAC 30-135-90	Added	19:25 VA.R. 3789-3791	10/1/03
12 VAC 35-105	Erratum	19:25 VA. R. 3844	--
12 VAC 35-180-10	Amended	20:9 VA.R. 892	2/11/04
12 VAC-35-180-20	Repealed	20:9 VA.R. 894	2/11/04
12 VAC 35-180-30 through 12 VAC 35-180-110	Amended	20:9 VA.R. 894-899	2/11/04
12 VAC 35-180-130 through 12 VAC 35-180-150	Amended	20:9 VA.R. 899	2/11/04
Title 13. Housing			
13 VAC 5-21-10	Amended	19:25 VA.R. 3791	10/1/03
13 VAC 5-21-20	Amended	19:25 VA.R. 3792	10/1/03
13 VAC 5-21-31	Amended	19:25 VA.R. 3792	10/1/03
13 VAC 5-21-41	Amended	19:25 VA.R. 3793	10/1/03
13 VAC 5-21-51	Amended	19:25 VA.R. 3795	10/1/03
13 VAC 5-21-61	Amended	19:25 VA.R. 3795	10/1/03
13 VAC 5-21-70	Amended	19:25 VA.R. 3796	10/1/03
13 VAC 5-31-10	Amended	19:25 VA.R. 3796	10/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-31-40	Amended	19:25 VA.R. 3796	10/1/03
13 VAC 5-31-50	Amended	19:25 VA.R. 3796	10/1/03
13 VAC 5-31-60	Amended	19:25 VA.R. 3796	10/1/03
13 VAC 5-31-90	Amended	19:25 VA.R. 3796	10/1/03
13 VAC 5-31-110	Amended	19:25 VA.R. 3797	10/1/03
13 VAC 5-31-180	Amended	19:25 VA.R. 3797	10/1/03
13 VAC 5-31-190	Added	19:25 VA.R. 3797	10/1/03
13 VAC 5-51	Erratum	20:1 VA.R 39	--
13 VAC 5-51-11	Amended	19:25 VA.R. 3798	10/1/03
13 VAC 5-51-21	Amended	19:25 VA.R. 3798	10/1/03
13 VAC 5-51-31	Amended	19:25 VA.R. 3799	10/1/03
13 VAC 5-51-41	Amended	19:25 VA.R. 3799	10/1/03
13 VAC 5-51-51	Amended	19:25 VA.R. 3800	10/1/03
13 VAC 5-51-61	Amended	19:25 VA.R. 3801	10/1/03
13 VAC 5-51-71	Repealed	19:25 VA.R. 3801	10/1/03
13 VAC 5-51-81	Amended	19:25 VA.R. 3802	10/1/03
13 VAC 5-51-85	Added	19:25 VA.R. 3810	10/1/03
13 VAC 5-51-91	Amended	19:25 VA.R. 3812	10/1/03
13 VAC 5-51-101	Amended	19:25 VA.R. 3813	10/1/03
13 VAC 5-51-111	Amended	19:25 VA.R. 3814	10/1/03
13 VAC 5-51-121	Amended	19:25 VA.R. 3814	10/1/03
13 VAC 5-51-129	Added	19:25 VA.R. 3815	10/1/03
13 VAC 5-51-130	Amended	19:25 VA.R. 3815	10/1/03
13 VAC 5-51-131	Amended	19:25 VA.R. 3815	10/1/03
13 VAC 5-51-132	Added	19:25 VA.R. 3816	10/1/03
13 VAC 5-51-133	Amended	19:25 VA.R. 3816	10/1/03
13 VAC 5-51-135	Amended	19:25 VA.R. 3816	10/1/03
13 VAC 5-51-136	Amended	19:25 VA.R. 3817	10/1/03
13 VAC 5-51-140	Amended	19:25 VA.R. 3817	10/1/03
13 VAC 5-51-150	Amended	19:25 VA.R. 3818	10/1/03
13 VAC 5-51-155	Added	19:25 VA.R. 3822	10/1/03
13 VAC 5-51-160	Repealed	19:25 VA.R. 3822	10/1/03
13 VAC 5-51-170	Repealed	19:25 VA.R. 3822	10/1/03
13 VAC 5-51-180	Repealed	19:25 VA.R. 3823	10/1/03
13 VAC 5-51-181	Repealed	19:25 VA.R. 3823	10/1/03
13 VAC 5-51-182	Repealed	19:25 VA.R. 3824	10/1/03
13 VAC 5-51-190	Repealed	19:25 VA.R. 3824	10/1/03
13 VAC 5-51-200	Repealed	19:25 VA.R. 3824	10/1/03
13 VAC 5-61-11 through 13 VAC 5-61-460	Repealed	19:25 VA.R. 3824	10/1/03
13 VAC 5-62	Erratum	20:2 VA.R. 140	--
13 VAC 5-62-10 through 13 VAC 5-62-480	Added	19:25 VA.R. 3824	10/1/03
13 VAC 5-62-260 L	Suspended	20:2 VA.R. 133	†
13 VAC 5-62-260 M	Suspended	20:2 VA.R. 133	†
13 VAC 5-62-260 N	Suspended	20:2 VA.R. 133	†
13 VAC 5-80-10	Amended	19:25 VA.R. 3796	10/1/03
13 VAC 5-80-20	Repealed	19:25 VA.R. 3796	10/1/03
13 VAC 5-80-30	Repealed	19:25 VA.R. 3796	10/1/03
13 VAC 5-80-40 through 13 VAC 5-80-140	Amended	19:25 VA.R. 3796	10/1/03
13 VAC 5-80-150	Repealed	19:25 VA.R. 3796	10/1/03
13 VAC 5-91-10	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-40	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-50	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-60	Amended	19:25 VA.R. 3825	10/1/03

† Effective date suspended for further public comment.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-91-100	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-110	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-120	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-140	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-160	Amended	19:25 VA.R. 3825	10/1/03
13 VAC 5-91-180	Amended	19:25 VA.R. 3826	10/1/03
13 VAC 5-91-200	Amended	19:25 VA.R. 3826	10/1/03
13 VAC 5-91-210	Amended	19:25 VA.R. 3826	10/1/03
13 VAC 5-91-230	Repealed	19:25 VA.R. 3826	10/1/03
13 VAC 5-91-245	Added	19:25 VA.R. 3826	10/1/03
13 VAC 5-91-250	Amended	19:25 VA.R. 3826	10/1/03
13 VAC 5-91-260	Amended	19:25 VA.R. 3826	10/1/03
13 VAC 5-91-270	Amended	19:25 VA.R. 3826	10/1/03
13 VAC 10-10-10	Amended	19:25 VA.R. 3826	8/1/03
13 VAC 10-10-20	Amended	19:25 VA.R. 3826	8/1/03
13 VAC 10-40-10	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-30 through 13 VAC 10-40-70	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-90	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-100	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-120	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-120	Amended	20:3 VA.R. 244	9/25/03
13 VAC 10-40-130	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-130	Amended	20:3 VA.R. 244	9/25/03
13 VAC 10-40-140	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-160	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-160	Amended	20:3 VA.R. 244	9/25/03
13 VAC 10-40-170	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-190 through 13 VAC 10-40-230	Amended	19:25 VA.R. 3827	8/1/03
13 VAC 10-40-190	Amended	20:3 VA.R. 244	9/25/03
13 VAC 10-40-210	Amended	20:3 VA.R. 244	9/25/03
13 VAC 10-40-230	Amended	20:3 VA.R. 244	9/25/03
Title 14. Insurance			
14 VAC 5-71-10	Amended	20:5 VA.R. 457	11/1/03
14 VAC 5-71-20	Amended	20:5 VA.R. 458	11/1/03
14 VAC 5-71-30	Repealed	20:5 VA.R. 459	11/1/03
14 VAC 5-71-31	Added	20:5 VA.R. 460	11/1/03
14 VAC 5-71-35	Added	20:5 VA.R. 463	11/1/03
14 VAC 5-71-40	Amended	20:5 VA.R. 464	11/1/03
14 VAC 5-71-60	Amended	20:5 VA.R. 464	11/1/03
14 VAC 5-71-70	Amended	20:5 VA.R. 465	11/1/03
14 VAC 5-71-80	Repealed	20:5 VA.R. 466	11/1/03
14 VAC 5-71-90	Amended	20:5 VA.R. 466	11/1/03
14 VAC 5-71-91	Added	20:5 VA.R. 467	11/1/03
14 VAC 5-71-92	Added	20:5 VA.R. 467	11/1/03
14 VAC 5-71-93	Added	20:5 VA.R. 467	11/1/03
14 VAC 5-310	Erratum	20:8 VA.R. 850	--
14 VAC 5-310-10	Amended	20:5 VA.R. 469	12/31/03
14 VAC 5-310-20	Amended	20:5 VA.R. 469	12/31/03
14 VAC 5-310-30	Amended	20:5 VA.R. 469	12/31/03
14 VAC 5-310-40	Amended	20:5 VA.R. 470	12/31/03
14 VAC 5-310-50	Amended	20:5 VA.R. 470	12/31/03
14 VAC 5-310-60	Repealed	20:5 VA.R. 472	12/31/03
14 VAC 5-310-70	Repealed	20:5 VA.R. 473	12/31/03
14 VAC 5-310-80	Amended	20:5 VA.R. 475	12/31/03
14 VAC 5-310-90	Amended	20:5 VA.R. 479	12/31/03
14 VAC 5-310-100	Amended	20:5 VA.R. 481	12/31/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-310-105	Added	20:5 VA.R. 482	12/31/03
14 VAC 5-310-110	Repealed	20:5 VA.R. 482	12/31/03
Title 16. Labor and Employment			
16 VAC 25-85-1904.12	Repealed	20:7 VA.R. 673	1/15/04
16 VAC 25-85-1904.29	Amended	20:7 VA.R. 673	1/15/04
Title 18. Professional and Occupational Licensing			
18 VAC 5-21-10 through 18 VAC 5-21-40 emer	Amended	20:9 VA.R. 915-921	12/15/03-12/14/04
18 VAC 5-21-170 emer	Amended	20:9 VA.R. 921	12/15/03-12/14/04
18 VAC 15-30	Erratum	19:26 VA.R. 3926	--
18 VAC 30-20-10	Amended	20:8 VA.R. 821	1/28/04
18 VAC 30-20-150	Amended	20:8 VA.R. 821	1/28/04
18 VAC 30-20-170	Amended	20:8 VA.R. 821	1/28/04
18 VAC 30-20-240	Amended	20:8 VA.R. 821	1/28/04
18 VAC 30-20-280	Amended	20:8 VA.R. 821	1/28/04
18 VAC 60-20-50	Amended	20:9 VA.R. 902	4/1/04
18 VAC 65-20-10	Amended	20:8 VA.R. 822	1/28/04
18 VAC 65-20-50	Amended	20:8 VA.R. 822	1/28/04
18 VAC 65-20-70	Amended	20:8 VA.R. 822	1/28/04
18 VAC 65-20-170	Amended	20:8 VA.R. 823	1/28/04
18 VAC 65-20-350	Amended	20:8 VA.R. 823	1/28/04
18 VAC 65-20-400	Amended	20:8 VA.R. 823	1/28/04
18 VAC 65-20-440	Amended	20:8 VA.R. 824	1/28/04
18 VAC 65-20-570	Amended	20:8 VA.R. 824	1/28/04
18 VAC 65-20-580	Amended	20:8 VA.R. 824	1/28/04
18 VAC 65-20-590	Amended	20:8 VA.R. 824	1/28/04
18 VAC 65-20-700	Amended	20:8 VA.R. 824	1/28/04
18 VAC 76-40-10 emer	Added	19:25 VA.R. 3831	8/6/03-8/5/04
18 VAC 76-40-20 emer	Added	19:25 VA.R. 3831	8/6/03-8/5/04
18 VAC 76-40-30 emer	Added	19:25 VA.R. 3832	8/6/03-8/5/04
18 VAC 76-40-30 emer (Forms)	Added	19:25 VA.R. 3833	--
18 VAC 80-20-70	Amended	19:25 VA.R. 3827	10/1/03
18 VAC 140-20-105	Amended	20:8 VA.R. 825	1/28/04
18 VAC 140-20-150	Amended	20:8 VA.R. 826	1/28/04
Title 19. Public Safety			
19 VAC 30-20-80	Amended	20:4 VA.R. 352	1/2/04
19 VAC 30-80-20	Amended	20:2 VA.R. 134	11/5/03
19 VAC 30-80-40	Added	20:2 VA.R. 134	11/5/03
Title 21. Securities and Retail Franchising			
21 VAC 5-120-50	Amended	20:1 VA.R. 32	9/2/03
Title 22. Social Services			
22 VAC 30-20-90	Amended	20:7 VA.R. 674	1/15/04
22 VAC 30-30-10	Amended	20:9 VA.R. 899	2/11/04
22 VAC 30-30-20	Amended	20:9 VA.R. 899	2/11/04
22 VAC 30-30-30	Repealed	20:9 VA.R. 899	2/11/04
22 VAC 30-30-31	Added	20:9 VA.R. 899	2/11/04
22 VAC 30-30-40	Repealed	20:9 VA.R. 899	2/11/04
22 VAC 30-30-50 through 22 VAC 30-30-120	Amended	20:9 VA.R. 899	2/11/04
22 VAC 30-30-130	Repealed	20:9 VA.R. 899	2/11/04
22 VAC 30-30-131	Added	20:9 VA.R. 899	2/11/04
22 VAC 30-30-140	Repealed	20:9 VA.R. 899	2/11/04
22 VAC 30-30-141	Added	20:9 VA.R. 899	2/11/04
22 VAC 30-30-160	Amended	20:9 VA.R. 899	2/11/04
22 VAC 30-30-170 through 22 VAC 30-30-210	Repealed	20:9 VA.R. 899	2/11/04
22 VAC 30-30-171	Added	20:9 VA.R. 899	2/11/04
22 VAC 30-30-181	Added	20:9 VA.R. 899	2/11/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 30-30-191	Added	20:9 VA.R. 899	2/11/04
22 VAC 30-30-201	Added	20:9 VA.R. 899	2/11/04
22 VAC 30-30-211	Added	20:9 VA.R. 899	2/11/04
22 VAC 30-30-220	Amended	20:9 VA.R. 899	2/11/04
22 VAC 30-30-230	Repealed	20:9 VA.R. 901	2/11/04
22 VAC 30-30-240	Repealed	20:9 VA.R. 901	2/11/04
22 VAC 30-30-241	Added	20:9 VA.R. 901	2/11/04
22 VAC 30-30-250	Amended	20:9 VA.R. 901	2/11/04
22 VAC 30-30-260	Added	20:9 VA.R. 901	2/11/04
22 VAC 30-30-270	Added	20:9 VA.R. 901	2/11/04
22 VAC 30-30-280	Added	20:9 VA.R. 901	2/11/04
22 VAC 40-250-10	Amended	20:8 VA.R. 827	2/1/04
22 VAC 40-250-20	Amended	20:8 VA.R. 827	2/1/04
22 VAC 40-260-10	Amended	20:8 VA.R. 827	2/1/04
22 VAC 40-260-20	Amended	20:8 VA.R. 828	2/1/04
22 VAC 40-270	Repealed	20:8 VA.R. 831	2/1/04
22 VAC 40-675-10 through 22 VAC 40-675-220	Added	20:8 VA.R. 832-835	2/1/04
22 VAC 40-705-60	Amended	20:5 VA.R. 483	1/1/04
22 VAC 40-705-130	Amended	20:5 VA.R. 483	1/1/04
22 VAC 40-730-115	Added	20:5 VA.R. 484	1/1/04
Title 24. Transportation and Motor Vehicles			
24 VAC 30-71	Erratum	20:7 VA.R. 678	--
24 VAC 30-71-10	Amended	20:4 VA.R. 353	12/3/03
24 VAC 30-71-20	Amended	20:4 VA.R. 353	12/3/03
24 VAC 30-71-30	Amended	20:4 VA.R. 354	12/3/03
24 VAC 30-71-50	Amended	20:4 VA.R. 354	12/3/03
24 VAC 30-71-70	Amended	20:4 VA.R. 354	12/3/03
24 VAC 30-71-80	Amended	20:4 VA.R. 354	12/3/03
24 VAC 30-71-90	Amended	20:4 VA.R. 355	12/3/03
24 VAC 30-71-100	Amended	20:4 VA.R. 355	12/3/03
24 VAC 30-71-110	Amended	20:4 VA.R. 355	12/3/03
24 VAC 30-71-120	Amended	20:4 VA.R. 355	12/3/03
24 VAC 30-71-130	Amended	20:4 VA.R. 355	12/3/03
24 VAC 30-71-150	Amended	20:4 VA.R. 357	12/3/03
24 VAC 30-71-160	Amended	20:4 VA.R. 357	12/3/03
24 VAC 30-71-170	Amended	20:4 VA.R. 362	12/3/03
24 VAC 30-580-10 through 24 VAC 30-580-40	Amended	20:5 VA.R. 485-486	10/28/03

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Pesticide Control Board intends to consider amending regulations entitled **2 VAC 20-51, Regulations Governing Pesticide Applicator Certification Under Authority of the Virginia Pesticide Control Act**. The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the regulation (i) to help reduce fraudulent examination activities by eliminating proctoring by private individuals; (ii) to more clearly define application and training requirements; (iii) to establish applicator categories in areas where needed for industry; (iv) to meet EPA requirements; and (v) for housekeeping purposes. The agency invites comment on whether there should be an advisor.

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

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public comments may be submitted until March 12, 2004.

Contact: Marvin A. Lawson, Ph.D., Executive Secretary, Pesticide Control Board, 1100 Bank St., 11th Floor, Richmond, VA 23219, telephone (804) 786-3534, FAX (804) 786-5112, toll-free 1-800-552-9963 or e-mail mlwson@vdacs@state.va.us.

VA.R. Doc. No. R04-77; Filed December 30, 2003, 11:16 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider adopting regulations entitled **6 VAC 20-230, Regulations Relating to the Conservator of the Peace**. The purpose of the proposed action is to establish a registration process to include a fingerprint-based background check, registration fees, compulsory minimum entry-level training standards, and administration of the regulatory system.

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

Statutory Authority: §§ 9.1-150.2 and 19.2-113 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on February 11, 2004.

Contact: Ellen Spain, Regulatory Programs Coordinator for Private Security Services, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone: (804) 786-1018, FAX (804) 786-6344, or e-mail espain@dcjs.state.va.us.

VA.R. Doc. No. R04-66; Filed December 15, 2003, 1:21 p.m.

TITLE 9. ENVIRONMENT

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 25-40, Policy for Nutrient Enriched Waters**. The purpose of the proposed action is to establish numerical limitations for the discharge of total nitrogen, and the possible revision of numerical limitations for the discharge of total phosphorus, for certain discharges located within the Chesapeake Bay watershed.

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; § 303 of the Clean Water Act.

Public comments may be submitted until 5 p.m. on March 12, 2004.

Contact: John Kennedy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4312, FAX (804) 698-4116 or e-mail jmkennedy@deq.state.va.us.

VA.R. Doc. No. R04-78; Filed December 31, 2003, 11:48 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-10, State Plan Under Title XIX of the Social Security Act Medical Assistance Program, and 12 VAC 30-130, Amount, Duration and Scope of Selected Services.** The purpose of the proposed action is to permit DMAS to deny payment for pharmacy claims that conflict with standards of drug utilization review.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until February 25, 2004, to Javier Menendez, R.Ph., Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R04-73; Filed December 24, 2003, 11:51 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-50, Amount, Duration and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to implement a program of prospective and retrospective utilization review and prior authorization of pharmacy services for noninstitutionalized and institutionalized (nursing facility) recipients who are prescribed large numbers of different prescription (legend) drugs within specific time periods. Such utilization review of covered services is permitted by 42 CFR 440.230 (d).

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until February 25, 2004, to Javier Menendez, R.Ph., Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R04-71; Filed December 24, 2003, 11:53 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care Services, 12 VAC 30-80, Methods and Standards for Establishing Payment Rates: Other Types of Care, and 12 VAC 30-130, Amount, Duration and Scope of Selected Services.** The purpose of the proposed action is to institute the requirement that prescription drugs be contained within the DMAS preferred drug list in order to be covered by Medicaid. Drugs not included on this list will require prior authorization before they will be paid for by Medicaid. This action also establishes state supplemental rebates and the Pharmacy and Therapeutics Committee.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until January 28, 2004, to Adrienne Fegans, Health Programs Administrator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R04-54; Filed November 25, 2003, 3:44 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-120, Waivered Services: MEDALLION.** The purpose of the proposed action is to fully conform the MEDALLION regulations (12 VAC 30-120-260 through 12 VAC 30-120-350) to requirements of the federal Balanced Budget Act of 1997, as well as to update the MEDALLION regulation with regard to the MEDALLION Waiver and changes in other regulations.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until January 28, 2004, to Alissa Nashwinter, Division of Health Care Services, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R04-59; Filed December 4, 2003, 4:18 p.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-120, Waivered Services: MEDALLION II**. The purpose of the proposed action is to fully conform the MEDALLION II regulations (12 VAC 30-120-360 through 12 VAC 30-120-420) to requirements of the federal Balanced Budget Act of 1997, as well as to update the MEDALLION II regulation with regard to the MEDALLION II Waiver and changes in other regulations.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until January 28, 2004, to Patti Davidson, Division of Health Care Services, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R04-60; Filed December 4, 2003, 4:20 p.m.

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to consider adopting regulations entitled **16 VAC 25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors**. The purpose of the proposed action is to set minimum aggregate limits for professional liability or errors of omission coverage or other methods of ensuring financial responsibility for boiler and pressure vessel contract fee inspectors operating in the Commonwealth.

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

Statutory Authority: § 40.1-51.9:2 of the Code of Virginia.

Public comments may be submitted until February 12, 2004.

Contact: Fred P. Barton, Director, Boiler Safety Compliance Director, Department of Labor and Industry, Powers Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-3262, FAX (804) 371-2324, or e-mail fpb@doli.state.va.us.

VA.R. Doc. No. R04-68; Filed December 19, 2003, Noon

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Accountancy intends to consider amending regulations entitled **18 VAC 5-21, Board of Accountancy Regulations**. The purpose of the proposed action is to make changes incorporating amendments about the qualifications for, and implementation of, the new computerized CPA exam, and the new annual requirements for two CPE credits in ethics.

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

Statutory Authority: § 54.1-4403 of the Code of Virginia.

Public comments may be submitted until February 25, 2004.

Contact: Mark D'Amato, Regulatory Coordinator, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-0502, FAX (804) 367-2174 or e-mail mark@boa.state.va.us.

VA.R. Doc. No. R04-76; Filed January 5, 2004, 10:49 a.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled **18 VAC 160-20, Board for Waterworks and Wastewater Works Operators Regulations**. The purpose of the proposed action is to review the experience requirements to determine if experience obtained at a nonclassified waterworks or wastewater works facility should qualify an individual to sit for the examination.

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

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on February 13, 2004.

Contact: David E. Dick, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128, or e-mail waterwasteoper@dpor.state.va.us.

VA.R. Doc. No. R04-67; Filed December 10, 2003, 3:27 p.m.

TITLE 22. SOCIAL SERVICES

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

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intend to consider repealing regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities**; and adopting regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities**. The purpose of the proposed action is to promulgate revised standards that protect the vulnerable children who are separated from their families and reside in children's residential facilities and to assure that a acceptable level of care, treatment, and education are provided. The regulation will also (i) meet federal regulations, (ii) ensure that services provided to residents are appropriate for their needs (iii) bring the standards in line with current industry standards and needs, (iv) clarify frequently misinterpreted standards and (v) delete unnecessary requirements.

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

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323.2, 37.1-182, 37.1-189.1, 63.2-203, 63.2-217, 63.2-1737, 66-10, 66-24 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on February 25, 2004.

Contact: Charlene Vincent, Coordinator, Department of Social Services, Office of Interdepartmental Regulation, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095, or e-mail charlene.vincent@dss.virginia.gov.

VA.R. Doc. Nos. R04-80 and R04-81; Filed January 5, 2004, 3:10 p.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 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-70. **Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services (amending 12 VAC 30-70-271).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia and Chapter 1042 of the 2003 Acts of Assembly (Item 325 OOO).

Public Hearing Date: N/A - Public comments may be submitted until March 26, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7355, FAX (804) 786-1680, or e-mail sford@dmas.state.va.us.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. Specific authority for this action is found in the 2003 Appropriation Act (Chapter 1042 of the 2003 Acts of Assembly), Item 325 OOO. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for reimbursement to providers.

Purpose: The regulation governing reimbursement of inpatient hospital capital costs is 12 VAC 30-70-271. Prior to the July 1, 2003, effective date of the emergency regulation preceding this proposed regulation, inpatient hospitals were paid 100% of their actual allowable capital costs. This proposed change provides that, as of July 1, 2003, Type Two hospitals will be paid 80% of their actual allowable capital costs. This proposed action is not expected to have any direct impact on the health, safety, or welfare of citizens.

Substance: The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services (Attachment 4.19-A -- 12 VAC 30-70-271). Prior to the July 1, 2003, effective date of the emergency regulation preceding this proposed regulation, inpatient hospitals were paid 100% of the actual allowable capital costs. The proposed amendment adds language providing that as of July 1, 2003, Type Two hospitals will be paid 80% of allowable capital costs.

Issues: The effect of reducing the percentage of allowable inpatient hospital capital costs that will be reimbursed will be lower reimbursement expenditures for DMAS. The advantage is a significant savings to the Commonwealth. The disadvantage to the hospital community is that there will be a reduction in allowable capital cost reimbursement from DMAS for inpatient hospitals.

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 the 2003 Appropriation Act, Item 325 OOO, the proposed change reduces the inpatient hospital capital reimbursement to 80% of the allowable costs from 100% for nonteaching hospitals. The proposed change has been in effect since July 2003 under the emergency regulations.

Estimated economic impact. The proposed regulation will permanently reduce the Medicaid capital reimbursement to nonteaching hospitals from 100% of the allowable actual costs to 80% of the allowable costs. This change will reduce Medicaid reimbursements to 106 nonteaching hospitals for inpatient capital costs by about \$5.2 million per year. Of that amount, approximately one half is the state share and the remaining is the federal share. Thus, this change represents approximately \$2.6 million savings in Medicaid expenditures annually for the Commonwealth, which can be used beneficially through other government expenditure or through lower taxes than would be required to maintain the higher reimbursement rates.

Probably the largest cost of this proposed change is the loss of approximately \$2.6 million in federal funding. In other words, in order to save \$2.6 million, the Commonwealth will give up another \$2.6 million in federal funding.

In response to the reduction in reimbursement rates for Medicaid Inpatient capital costs, nonteaching hospitals could potentially: (i) choose to no longer serve any Medicaid recipients (beyond emergency cases), (ii) choose to raise rates to private payers to offset the loss of Medicaid revenue, or (iii) scale back services.

The economic impact of the proposed rate reduction depends on the effect on each nonteaching hospital's profit margin. If a hospital cannot offset its revenue losses from other sources such as private payers, it could end the participation in the Medicaid program. However, the department is not aware of any hospitals that have left the program since July 2003 when the payments were reduced.

Also, the available research lacks evidence that hospitals are able to shift costs to private providers in response to reduction on Medicaid rates.¹ Since no hospitals stopped participating in the Medicaid program and they seem to be limited in their ability to shift costs to private payers, the most likely response would be reducing services to Medicaid recipients. This could be a reduction in the quantity of services if hospitals start prioritizing patients with willingness and ability to pay higher rates, or a reduction in the quality of services if hospitals choose to operate with fewer support staff and eliminate services that are considered beneficial, but non-essential. This reduction in inpatient services could also increase the inpatient services provided by teaching hospitals whose rates are higher. Thus, we may also see a substitution away from nonteaching hospitals toward teaching hospitals in the delivery of inpatient Medicaid services.

Businesses and entities affected. The proposed regulations affect the 106 nonteaching hospitals that provide inpatient services to Medicaid recipients, as well as their staff and patients.

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

Projected impact on employment. The proposal to limit nonteaching hospitals to 80% of their allowable costs for inpatient capital costs will likely reduce services and some employment at these hospitals. Conversely, if there is a significant shift of services from nonteaching hospitals to teaching hospitals we may see an increase in employment at teaching hospitals, which would balance some of the possible employment loss at nonteaching hospitals.

Effects on the use and value of private property. The lower reimbursement rates will consequently lower the value of private nonteaching hospitals. Private hospitals may react by offering fewer services.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: DMAS has reviewed the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning inpatient hospital services. Noting that the analysis is predicated on potential scenarios, which may or may not come to pass regarding hospital reactions to the new

reimbursement methodology, DMAS raises no issues with this analysis.

Summary:

This proposed regulation reduces capital cost reimbursement levels for inpatient hospitals to 80%.

12 VAC 30-70-271. Payment for capital costs.

A. *Inpatient capital costs shall continue to be paid determined on an allowable cost basis and settled at the hospital's fiscal year end. Allowable cost shall be determined following the methodology described in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130). Inpatient capital costs of Type One hospitals shall continue to be settled at 100% of allowable cost. For services beginning July 1, 2003, inpatient capital costs of Type Two hospitals shall be settled at 80% of allowable cost. For hospitals with fiscal years that do not begin on July 1, 2003, inpatient capital costs for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date based on the number of calendar months before and after that date. Capital costs apportioned before that date shall be settled at 100% of allowable cost, and those after at 80% of allowable cost.*

B. The exception to the policy in subsection A of this section is that the hospital specific rate per day for services in freestanding psychiatric facilities licensed as hospitals, as determined in 12 VAC 30-70-321 B, shall be an all-inclusive payment for operating and capital costs.

C. Until prospective payment for capital costs is implemented, the provisions of 12 VAC 30-70-70 regarding recapture of depreciation shall remain in effect.

VA.R. Doc. No. R03-231; Filed December 30, 2003, 4:30 p.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

<p>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.</p>

Title of Regulation: **14 VAC 5-321. Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits (adding 14 VAC 5-321-10 through 14 VAC 5-321-60).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Date: Hearing will be scheduled if requested. Public comments may be submitted until March 12, 2004.

Agency Contact: Jarrett D. Goodwin, Principal Insurance Analyst, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9365, FAX (804) 371-9511, or e-mail jgoodwin@scc.state.va.us.

¹ Zwanziger, Jack, Melnick, Glenn A., and Anil Bamzai, "Can Cost Shifting Continue in a Price Competitive Environment?" *Health Economics*, v9, n3 (April 2000): 211-25.

Shawalter, Mark H., "Physicians' Cost Shifting Behavior: Medicaid versus Other Patients," *Contemporary Economic Policy*, v15, n2 (April 1997): 74-84.

Proposed Regulations

Summary:

The proposed regulation authorizes life insurers to use the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in determining reserve liabilities and nonforfeiture benefits for certain life insurance policies. 14 VAC 5-321-20 defines significant terms. 14 VAC 5-321-30 makes use of the 2001 CSO Mortality Table mandatory for policies issued on and after January 1, 2009, and authorizes insurers to elect to use the table for policies issued on and after July 1, 2004. Provisions at 14 VAC 5-321-40 require that actuarial opinions concerning use of the 2001 CSO Mortality Table be based on an asset adequacy analysis. This section also addresses use of the tables when establishing rates for smokers and nonsmokers. Provisions at 14 VAC 5-321-50 explain the relationship and application of rules at 14 VAC 5-319 when using the 2001 CSO Mortality Table. 14 VAC 5-321-60 addresses the use of gender-blended tables. Promulgation of the regulation, which is based on a model regulation adopted in 2002 by the National Association of Insurance Commissioners, is anticipated by § 38.2-3110 and other cited sections of Title 38.2 of the Code of Virginia.

AT RICHMOND, JANUARY 6, 2004

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2003-00272

Ex Parte: In the matter of Adopting Rules
Governing Use of the 2001 CSO Mortality
Table in Determining Reserve Liabilities
And Nonforfeiture Benefits

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission proposed rules to be designated as Chapter 321 of Title 14 of the Virginia Administrative Code entitled "Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits," which set forth new rules at 14 VAC 5-321-10 through 14 VAC 5-321-60.

The proposed rules create a new chapter (14 VAC 5-321) that authorizes life insurers to use the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in determining reserve liabilities and nonforfeiture benefits for certain life insurance policies. This new chapter is based on a model

regulation adopted in 2002 by the National Association of Insurance Commissioners.

The Commission is of the opinion that the proposed rules submitted by the Bureau of Insurance should be considered for adoption with an effective date of July 1, 2004.

IT IS THEREFORE ORDERED THAT:

(1) The proposed rules designated as Chapter 321 of Title 14 of the Virginia Administrative Code and entitled "Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits," which set forth new rules at 14 VAC 5-321-10 through 14 VAC 5-321-60, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed rules shall file such comments or hearing request on or before March 12, 2004, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2003-00272.

(3) If no written request for a hearing on the proposed rules is filed on or before March 12, 2004, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed rules, may adopt the rules proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the rules by mailing a copy of this Order, together with the proposed rules, to all persons licensed or authorized by the Commission pursuant to Title 38.2 of the Code of Virginia to write or reinsure any form of life insurance, and certain interested parties designated by the Bureau of Insurance.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed rules on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

CHAPTER 321.

USE OF THE 2001 CSO MORTALITY TABLE IN DETERMINING RESERVE LIABILITIES AND NONFORFEITURE BENEFITS.

14 VAC 5-321-10. Authority.

This chapter is promulgated by the commission, pursuant to § 38.2-223 of the Code of Virginia and in accordance with §§ 38.2-3130, 38.2-3131, 38.2-3206, 38.2-3207, 38.2-3208, 38.2-3209, and 38.2-4120 of the Code of Virginia and 14 VAC 5-319-40, to approve, recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO)

Mortality Table by and for insurers transacting the business of insurance in this Commonwealth.

14 VAC 5-321-20. Definitions.

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

"2001 CSO Mortality Table" means that mortality table, which is included in the Proceedings of the NAIC (2nd Quarter 2002), consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. The 2001 CSO Mortality Table may be accessed via the American Academy of Actuaries' website, http://www.actuary.org/life/cso_0702.htm.

"2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

"2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

"Commission" means the State Corporation Commission.

"Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

"NAIC" means the National Association of Insurance Commissioners.

"Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

14 VAC 5-321-30. 2001 CSO Mortality Table.

A. At the election of the insurer for any one or more specified plans of insurance and subject to the conditions stated in this chapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005, and before the date specified in subsection B of this section to which subsections A and B of 14 VAC 5-319-40 and subdivision 3 of § 38.2-3130 and § 38.2-3209 of the Code of Virginia are applicable. If the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

B. Subject to the conditions stated in this chapter, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which subdivision 3 of § 38.2-3130 and § 38.2-3209 of the Code of Virginia and subsections A and B of 14 VAC 5-319-40 are applicable.

14 VAC 5-321-40. Conditions.

A. For policies issued on or after January 1, 2005, with each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

1. Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
2. Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by § 38.2-3141 of the Code of Virginia and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits; or
3. Smoker and nonsmoker mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

B. For policies issued on or after January 1, 2005, with plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

C. For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the insurer for each such plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of 14 VAC 5-321-50 and 14 VAC 5-319 relative to use of the select and ultimate form.

D. When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for an insurer, any actuarial opinion in the annual statement filed with the commission shall be based on an asset adequacy analysis that meets the standards and satisfies requirements for an asset adequacy analysis performed pursuant to § 38.2-3127.1 B of the Code of Virginia and rules governing actuarial opinions and memoranda at 14 VAC 5-310.

14 VAC 5-321-50. Applicability of the 2001 CSO Mortality Table to 14 VAC 5-319.

A. The 2001 CSO Mortality Table may be used in applying rules at 14 VAC 5-319, concerning life insurance reserves, in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in 14 VAC 5-321-30.

1. When applying 14 VAC 5-319-30 B 2, the net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.
2. When determining "contract segmentation method" as defined by 14 VAC 5-319-10, all calculations are made using the 2001 CSO mortality rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in subdivision 4 of this subsection. The value of " $q_{x+k+t-1}$ " is the valuation mortality rate for deficiency reserves in policy year $k+t$, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.
3. When applying 14 VAC 5-319-40 A, the 2001 CSO Mortality Table is the minimum standard for basic reserves.

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4. When applying 14 VAC 5-319-40 B, the 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in subdivisions 1 c, 1 d, 2, and 3 of 14 VAC 5-319-40 B. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.

5. When applying 14 VAC 5-319-50 C, the valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

6. When applying 14 VAC 5-319-50 E 4, the calculations specified in 14 VAC 5-319-50 E shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

7. When applying 14 VAC 5-319-50 F 4, the calculations specified in 14 VAC 5-319-50 F shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

8. When applying 14 VAC 5-319-50 G 2, the calculations specified in 14 VAC 5-319-50 G shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

9. When applying 14 VAC 5-319-60 A 1 b, the one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

B. Nothing in this section shall be construed to expand the applicability of 14 VAC 5-319 to include life insurance policies excepted from regulation pursuant to 14 VAC 5-319-30 B.

14 VAC 5-321-60. Gender-Blended Tables.

A. For any ordinary life insurance policy delivered or issued for delivery in this Commonwealth on and after January 1, 2005, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the insurer for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection.

B. When applying subsection A of this section, the insurer may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

C. It shall not, in and of itself, be a violation of § 38.2-508 or § 38.2-508.2 of the Code of Virginia concerning respectively, unfair discrimination and discrimination prohibited, for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

DOCUMENT INCORPORATED BY REFERENCE

2001 CSO Mortality Table, December 2002, National Association of Insurance Commissioners.

VA.R. Doc. No. R04-82; Filed January 6, 2004, 4:51 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-80. General Procedures and Information for Licensure (amending 22 VAC 40-80-10, 22 VAC 40-80-30 through 22 VAC 40-80-60, 22 VAC 40-80-80 through 22 VAC 40-80-210, 22 VAC 40-80-230, 22 VAC 40-80-240, 22 VAC 40-80-260, 22 VAC 40-80-270, 22 VAC 40-80-290, 22 VAC 40-80-300, 22 VAC 40-80-310, 22 VAC 40-80-330, 22 VAC 40-80-340, 22 VAC 40-80-370; adding 22 VAC 40-80-375, 22 VAC 40-80-390 through 22 VAC 40-80-520; repealing 22 VAC 40-80-220, 22 VAC 40-80-350, 22 VAC 40-80-360, 22 VAC 40-80-380).**

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1733 and 63.2-1734 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until March 26, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Kathryn Thomas, Program Development Consultant, Department of Social Services, 7 North Eighth St., Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132, or e-mail kathryn.thomas@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia gives broad authority for the board to adopt regulations as are necessary or desirable to carry out the purpose of Title 63.2. Sections 63.2-1732, 63.2-1733 and 63.2-1734 give the board authority to adopt and enforce regulations to carry out the provisions of Title 63.2 regarding assisted living facilities, adult day care centers, and child welfare agencies, respectively.

Purpose: This regulation contains the general requirements that are applicable to all the department's licensed programs. The Code of Virginia requires that application fees be charged, applications be filed and certain types of licenses issued, investigations be conducted, records be maintained by licensed facilities, variances can be granted, and regulations be adopted for the commissioner to use in determining when to impose sanctions. This regulation contains the department's rules to carry out these provisions.

This regulation protects the health, safety and welfare of adults and children receiving care in licensed facilities by ensuring that procedures are in place for both the department and the licensee to follow in the licensure process required by the Code of Virginia. It also provides for sanctioning and termination of licensure when health and safety requirements are not met.

Substance: PART I. INTRODUCTION. Definitions are added, amended or deleted as necessary to best explain the standards.

PART II. LICENSING STANDARDS. The name of "adult care residence" is changed to "assisted living facility." Reference to "child day center system" is deleted because this program no longer exists.

PART III. THE LICENSE. "Limited liability company" is added to the list of organizations that may apply for a license to operate a facility or agency.

A list of "offenses" that may cause a licensee to be guilty of a Class 1 misdemeanor is added.

Exceptions that allowed an existing assisted living facility to receive a second conditional or provisional license with the approval of the State Fire Marshal were deleted.

An exception is added that specifies that child day centers will receive a license for two years.

A standard now requires that the most recent violation notice be posted in the facility or agency rather than allowing the licensee to post a notice indicating where it may be viewed in the facility.

PART IV. THE LICENSING PROCESS. A new standard now requires that all applicants for licensure attend preapplication orientation. Options are provided for how the training may be obtained.

A new standard amends the requirements regarding frequency of inspections in licensed facilities.

Amendments were made to the standard regarding early compliance to require that a facility must request early compliance after a conditional or provisional license prior to the mid-point of the licensure period or within 90 days of the expiration of the conditional or provisional license, whichever comes first.

Amendments specify that in order for a renewal application to be considered complete, the licensee must have paid any outstanding civil penalty assessed after a final order.

Amendments specify that the department will not process a renewal application when the current license is being denied or revoked in accordance with the Administrative Process Act.

PART V. ALLOWABLE VARIANCES. In PART I the definition of "allowable variance" was amended to reflect the intent of the Code of Virginia, thus duplicative information was deleted.

The requirements were amended to allow applicants or licensees to submit new material within 30 days if a request for an allowable variance is denied, but makes it clear that the decision regarding the second request will be considered final and cannot be appealed.

PART VII. COMPLAINT INVESTIGATION. The standard providing for a parental hotline was expanded to establish a toll-free telephone number to receive complaints on all licensed facilities.

PART VIII. SANCTIONS. This part was amended to incorporate provisions in the Code of Virginia for special

orders and other changes that are related to the imposition of administrative sanctions against licensed facilities.

A chart was added to 22 VAC 40-80-370 to explain the appeal process steps when administrative sanctions are imposed.

22 VAC 40-80-375 was added to provide information about steps that can be taken to collect unpaid civil penalty payments.

PART IX. APPEALS AND HEARINGS. This is an entirely new part added upon the advice of the Office of the Attorney General to incorporate the department's procedures for hearings related to adverse actions. A dated version of the procedures exists but it has never been promulgated. It has now been updated and the Office of the Attorney General recommends that it be incorporated into this regulation.

Issues: The advantage of this regulation to applicants and licensees is that they are made aware of the general licensing standards they will be required to meet. This is also advantageous for licensing staff because implementation is consistent for all licensed programs. There are no disadvantages to the public or the Commonwealth because of this regulation.

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 substantive changes include (i) introducing new language explaining hearing procedures, (ii) incorporating recent statutory changes into the regulations, (iii) making the payment of outstanding civil penalties a condition for licensure, and (iv) requiring pre-application training for all providers.

Estimated economic impact. These regulations contain general licensure rules applicable to all programs that are licensed by the Department of Social Services (the department). The facilities regulated under these rules are assisted living facilities, adult day care centers, private child placing agencies, child caring institutions, independent foster homes, family day homes, and child day centers.

The most extensive proposed revision is the inclusion of a new section explaining hearing procedures for these licensed programs. Pursuant to a recommendation by the Office of the Attorney General, the Board of Social Services (the board) proposes to add a new section. This section contains detailed information primarily about initiating, processing, and finalizing appeal requests in addition to other pertinent information.

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According to the department, the proposed changes are in accordance with the Administrative Process Act and reflect the procedures followed in practice at least in the last two decades. Therefore, the proposed amendments are not expected to produce any significant economic effect, but may create some value by providing information on the appeals procedures and by reducing the potential for confusion among the regulated entities.

The proposed changes will also incorporate recent statutory requirements. One of the changes provides that some acts might make a licensee subject to a class 1 misdemeanor pursuant to a statutory change that occurred in 2002.¹ The main benefit of this change is informing the public about this new law. Another statutory change requires that the licensure period for child day centers is a fixed period of two years rather than up to three consecutive years.² The period of licensure remains at "up to three successive years" for all other licensed facilities. In the past, the department issued licenses to child day centers for a period of one, two, or three years. The length of licensure approval was determined according to the guidance document titled "Performance Based Licensing and Monitoring." The varying lengths of licensure approval may have signaled the quality of the facility. Provided that the length of approval correctly reflects the true quality of the facility, this signal inherent in the licensure approval would produce desirable economic outcomes. First, it would allow the department to allocate more resources to facilities with shorter lengths of licensure to improve compliance and quality, and fewer resources to facilities with higher quality. Second, potential customers would have information about the quality of the services they are about to receive and adjust their willingness to pay according to the signaled quality. The economic outcome of both of these effects would be a better allocation of limited public and private resources. However, this outcome would be achieved only if the length of licensure is an appropriate measure of quality, which is beyond the scope of this analysis to determine. Thus, it follows that the fixed two-year licensure period may have introduced some net economic costs.

Additionally, the proposed amendments will incorporate relatively older statutory changes: adding an exception for inspection of financial records of child welfare agencies³ and adding updated statutorily established inspection frequencies for various facilities and whether the inspections are to be announced or unannounced.⁴ The actual effects of these changes should have been realized when the Code of Virginia was amended several years ago. Thus, no significant economic effect is expected upon incorporation of these amendments in the regulations.

The board also proposes to establish a requirement that in order for a renewal application by a licensee to be considered complete, any outstanding civil penalties must be paid. As of June 2003, the department was owed about \$36,300 from 56

facilities in unpaid civil penalties. The outstanding fines range from \$500 to \$1,500 per facility and some fines have been due since 1999. This requirement will likely strengthen enforcement in collecting penalties overdue to the department and probably provide incentives to improve compliance.

Finally, the board proposes to expand the preapplication orientation requirement to include all applicants for licensure. Currently, this requirement is mandatory for assisted living facilities pursuant to § 63.2-1800 of the Code of Virginia but not for others. In practice, however, the department makes this program available to all facilities free of charge and some voluntarily attend. The orientation takes half a day and provides information to new license applicants on health and safety issues and resident's rights. According to the department, voluntary attendance is quite good, but some who need the orientation most may choose not to attend. Also, the department's inspectors have noted improved compliance at the facilities following the orientation. The most recent data indicate that approximately 468 licensees/facilities voluntarily attended the prelicensure orientation in the last fiscal year. The department anticipates negligible change in the mandatory participation relative to current voluntary attendance. Thus, no significant economic effect is likely to result unless this training prevents a catastrophic health or safety event that would otherwise occur. Prediction of such "low-probability-high-cost" events requires extensive data, which is not available in this case.

Businesses and entities affected. The proposed regulations apply to 636 assisted living facilities, 72 adult day care centers, 67 private child placing agencies, 6 child caring institutions, 3 independent foster homes, 1,657 family day homes, and 2,586 child day centers.

Localities particularly affected. The proposed regulations are not anticipated to affect any locality more than others.

Projected impact on employment. The statutory change introducing a two-year uniform licensure period for child day centers may have increased the demand for services provided by facilities that were receiving shorter licensure approval and may have decreased the demand for services provided by some other facilities. This may have shifted the employment at the facility level, but the net effect on within-industry employment level was probably not significant as the overall demand for these services is unlikely to be affected by this change.

Effects on the use and value of private property. Similarly, the two-year uniform licensure period for child day centers may have increased the revenues of facilities that would otherwise be granted a shorter license approval and decreased the revenues of other facilities. Thus, this change may have had a positive or negative effect on the value of facilities through changes in profit stream depending on the length of licensure they would have otherwise received.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.

¹ § 63.2-1712 of the Code of Virginia as amended in 2002.

² § 63.2-1701 of the Code of Virginia as amended in 2002.

³ § 63.2-1702 of the Code of Virginia as amended in 1997.

⁴ § 63.2-1706 of the Code of Virginia as amended in 1999.

Summary:

The proposed amendments incorporate changes that have been made to the Code of Virginia since the last revision of the regulation. This regulation contains general requirements that are applicable to all the department's licensed programs but that are not included in the programmatic regulations. The regulation explains the application and licensing processes and the responsibilities of both the department and the applicant or licensee in those processes. These amendments reflect the current practices of the department as they relate to subject facilities. The most substantive changes were made to Part VIII regarding sanctions because amendments have been made to the Code of Virginia regarding negative actions since the regulation was last revised. Also, upon the advice of the Office of the Attorney General, a new part related to hearings has been added. These procedures affect licensed facilities when they are involved in negative actions.

PART I. INTRODUCTION.

22 VAC 40-80-10. Definitions.

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

"Administrative hearing" means a hearing that is conducted pursuant to § 2.2-4020 of the Administrative Process Act.

"Adult care facility" means a licensed ~~adult care residence~~ assisted living facility or adult day care center.

"Adverse action" means any case where the department either gives notice of revocation or refuses to issue a license for an assisted living facility, adult day care center or child welfare agency or imposes another administrative sanction pursuant to § 63.2-1709 of the Code of Virginia.

"Aggrieved party" means an applicant or licensee who has requested an appeal in accordance with instructions provided after the department has given written notice of the imposition of an administrative sanction or adverse action for an assisted living facility, adult day care center, or child welfare agency.

~~*"Allegation" means an accusation that a facility which is subject to licensure is operating without a license.*~~

~~*"Allowable variance" means (i) permission to meet the intent of a standard by some means other than as specified by the standard, or (ii) the suspension of enforcement of a particular standard or portion of the standard for a stated time period permission is granted by the department to a licensee or applicant for licensure to meet the intent of a standard by some means other than as specified by the standard when the applicant or licensee has demonstrated that (i) the implementation of a standard would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of persons in care.*~~

"Applicant" means the person, corporation, partnership, association, ~~limited liability company~~ or public agency ~~which~~ that has applied for a license.

"Board" means the State Board of Social Services.

"Child welfare agency" means a child day center, ~~child day center system~~, child-placing agency, child-caring institution, family day home, family day system, or independent foster home.

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

~~*"Complaint" means an accusation that a licensed facility is not in compliance with licensing standards or law facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.*~~

"Conditional license" means a license ~~which~~ that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Consent agreement" means an agreement between the licensee and the department that the licensee will perform specific actions for the purpose of correcting violations to come into compliance with standards or statutes.

"Council" means the Child Day-Care Council.

"Day" means a calendar day unless otherwise specified.

"Denial" means the act of refusing to grant a license after receipt of an original or renewal application.

"Department" means the Department of Social Services.

"Early compliance" means ~~replacement of that the licensee has demonstrated full compliance with requirements, allowing the department to replace~~ a provisional or conditional license with a regular license.

"Functional design" means the design features of building and grounds not regulated by the Building Code, necessary for particular activities and operations of a facility subject to licensure by the Department of Social Services.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of children or adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.

"Hearing coordinator" means the person designated by the Department of Social Services to perform certain

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administrative functions involved in setting up and carrying out the hearings concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency, as set out herein.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia to preside at hearings concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency.

"Informal conference" means the informal fact-finding procedures available pursuant to §§ 2.2-4019 and 2.2-3021 of the Code of Virginia.

"Licensee" means the person, corporation, partnership, association, *limited liability company*, or public agency to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the facility.

"Probationary status" means the placing of a licensee on notice that the ~~child welfare facility~~ or agency is substantially out of compliance with the terms of its license and the health, safety, and well-being of ~~children~~ *persons in care* are at risk. Probationary status is a precursor to more serious action such as revocation, denial, or injunctive action unless immediate corrective action occurs.

"Provisional license" means a license ~~which~~ *that* may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the ~~standards~~ *law and regulations*.

"Recommended findings of fact and recommended decision" means the report prepared by the hearing officer upon evidence presented in the administrative hearing based on the applicable laws and regulations under which the department operates.

"Regular license" means a license ~~which~~ *that* is issued for 12 months or more as provided in ~~Chapters 9 and 10 of Title 63.4 Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2~~ of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.

"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to Title 63.2 of the Code of Virginia by the commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. The 12-month period begins 30 days after notification of the issuance of a special order or at the conclusion of all appeal steps.

PART II. LICENSING STANDARDS REGULATIONS.

22 VAC 40-80-30. Responsibility of the department.

Through the administration of the licensing program, the Department of Social Services assumes responsibility to

ensure that licensed facilities and agencies provide children and adults with at least a minimum level of care in accordance with ~~standards~~ *regulations* prescribed by the State Board of Social Services and Child Day-Care Council. The department also has the responsibility to investigate allegations of *illegal operations and to initiate action to suppress illegal operations*. The Virginia Code requires the State Board of Social Services to adopt ~~standards and~~ regulations for the licensure of the following categories of facilities and agencies:

1. Adult day-care centers;
2. ~~Adult care residences~~ *Assisted living facilities*;
3. Private child placing agencies;
4. Child caring institutions;
5. Independent foster homes;
6. Family day homes; *and*
7. Family day systems; ~~and.~~
8. ~~Child day center systems.~~

The Code of Virginia Code requires the Child Day-Care Council to adopt ~~standards and~~ regulations for the licensure of child day centers.

22 VAC 40-80-40. Adoption of ~~standards~~ *regulations*.

The State Board of Social Services or the Child Day-Care Council has adopted a ~~set of standards~~ *regulations* for each category listed above. The definition of each category and requirements for licensure are contained in each ~~set of standards~~ *regulation*.

22 VAC 40-80-50. Standards Regulation development/revision process.

A. In developing or revising ~~standards~~ *regulations* for licensed facilities or agencies, the Department of Social Services, acting as agent for the State Board of Social Services and Child Day-Care Council, adheres to the requirements of the Administrative Process Act (~~§ 9-6.14.4 § 2.2-4000 et seq.~~ of the Code of Virginia) and the public participation process.

B. ~~The department solicits~~ Input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers, and the general public *is solicited* in the development or revision of licensing ~~standards~~ *regulations* through informal and formal comment periods and public hearings.

C. ~~The department conducts~~ Periodic reviews *are conducted* and, when necessary, comprehensive revisions of each ~~set of standards~~ *regulation* to assure that its standards continue to protect ~~vulnerable~~ children and adults in out-of-home care while considering the interests of both providers and consumers of care.

PART III. THE LICENSE.

22 VAC 40-80-60. General.

A. A license to operate a facility or agency is issued to a specific person or organization to provide out-of-home care to

children or adults. An organization may be a partnership, association, corporation, *limited liability company*, or public entity.

B. Pursuant to § 63.2-1712 of the Code of Virginia, any person, officer, or member of a governing board of any association or corporation that operates an assisted living facility, adult day care center, or child welfare agency shall be guilty of a Class 1 misdemeanor if he:

- 1. Interferes with any representative of the commissioner in the discharge of his licensing duties;*
- 2. Makes to the commissioner or any representative of the commissioner any report or statement with respect to any assisted living facility, adult day care center, or child welfare agency that is known by such person to be false or untrue;*
- 3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked or has expired and not been renewed; or*
- 4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated on the license.*

22 VAC 40-80-80. Conditional license.

The department may issue a conditional license to a new facility or agency in order to permit the applicant to demonstrate compliance with specified standards. A conditional license may be ~~effective for any period not to exceed six consecutive months. When this period expires, renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.~~ When the conditional period is over, the facility or agency must substantially meet the standards or be denied a license. Conditional licenses may be used only for new facilities or agencies.

~~EXCEPTION: With the approval of the appropriate fire marshal, a second conditional license may be issued to a licensee to permit the licensee additional time to comply with the Fire Prevention Code when the licensee has purchased an existing licensed facility for adults.~~

22 VAC 40-80-90. Regular license.

A regular license is issued when the activities, services, facilities, and applicant's financial responsibility substantially meet the requirements for a license that are set forth by ~~standards regulations~~ adopted by the State Board of Social Services or the Child Day-Care Council and any additional requirements that may be specified by the Code of Virginia.

22 VAC 40-80-100. Duration of licensure.

Each license and renewal thereof may be issued for a period of up to three successive years. The criteria for determining the periods of licensure are based on the activities, services, management, and compliance history of the facility.

A ~~triennial~~ *three-year* license may be issued when a facility's activities, services, and management routinely and substantially exceed the minimum standards.

A ~~biennial~~ *two-year* license may be issued when a facility's services and management routinely meet and maintain compliance with minimum standards and may exceed on a sustained basis in some areas.

An annual license may be issued when a facility's activities, services, and management indicate an inconsistent level of compliance but substantial compliance is reached. Some reinforcement and guidance are needed in order for the facility to meet or maintain minimum requirements.

EXCEPTION: A license, other than a conditional or provisional license, issued to a child day center shall have a duration of two years from the date of issuance.

22 VAC 40-80-110. Provisional license.

When a regular license expires and the applicant is temporarily unable to comply with the requirements of the ~~standards regulations~~, the department may issue a provisional license for any period not to exceed six months. A provisional license shall not be issued to a facility or agency ~~that holds immediately following a conditional license.~~ *At the conclusion of the provisional licensure period, the facility or agency must be in substantial compliance with licensing standards or be denied a license to continue operation.*

~~When a period of six consecutive months of a provisional license expires, the facility or agency must substantially meet the standards and requirements or be denied a license.~~

~~EXCEPTION: With the approval of the appropriate fire marshal, a second provisional license may be issued to a facility for adults to permit the licensee additional time to comply with the Fire Prevention Code.~~

22 VAC 40-80-120. Terms of the license.

A. A facility or agency shall operate within the terms of its license.

B. The terms of any license include:

1. The operating name of the facility or agency;
2. The name of the individual, partnership, association, corporation, *limited liability company*, or public entity sponsoring the facility or agency;
3. The physical location of the facility or agency;
4. The maximum number of children or adults who may be in care at any time;
5. The period of time for which the license is effective; and
6. For child care facilities or agencies, the age range of children for whom care may be provided.

C. The terms of a license may include other limitations ~~which~~ *that* the department may prescribe within the context of the ~~standards regulations~~ for any facility/agency.

D. The provisional license cites the standards with which the licensee is not in compliance.

E. The conditional license cites the standards with which the licensee must demonstrate compliance when operation

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begins, and also any standards with which the licensee is not in compliance.

F. Prior to changes in operation ~~which that~~ would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. (See 22 VAC 40-80-190.)

G. The following documents shall be posted, *when applicable*, in a prominent place at each public entrance of conspicuous place on the licensed premises, ~~when applicable so that they are visible to the public:~~

1. The most recently issued license;
2. The most recent ~~compliance plan or a written notice of where it may be reviewed in the facility violation notice;~~
3. Probationary status announcements; ~~and~~
4. Denial and revocation notices; *and*
5. Any other documents required by the commissioner.

PART IV. THE LICENSING PROCESS.

22 VAC 40-80-130. ~~Preapplication consultation~~ Provider support services.

~~Upon request, the department's licensing representative will provide consultation to any person or persons seeking information about obtaining a license. The purpose of such consultation is:~~

- ~~1. To explain standards and the licensing process;~~
- ~~2. To help the potential applicant explore the operational demands of a licensed facility or agency;~~
- ~~3. To provide assistance in locating other sources of information;~~
- ~~4. To alert the potential applicant to the value of assessing the need for a facility or agency in the area to be served;~~
- ~~5. To review the potential applicant's proposed program plans, forms, etc., as they relate to standards; and~~
- ~~6. To alert the potential applicant regarding the need to meet other state and local ordinances, such as health, fire, and building codes, where applicable.~~

A. *The department's programmatic regulations require both general and specific training in various subject areas. The department provides preapplication consultation, ongoing technical assistance and consultation, and formal training sessions. The department's licensing representatives will provide assistance to any person seeking information about obtaining a license and information about initial and ongoing training requirements.*

B. *Applicants for licensure shall complete a prelicensure orientation program that focuses on health and safety standards, and residents' rights where applicable, offered through or approved by the department. The commissioner may, at his discretion, waive the orientation requirement or issue a license conditioned upon the owner's or administrator's completion of the required training.*

EXCEPTIONS: The following persons are exempt from the requirements of prelicensure training:

- 1. An applicant who has previously owned or managed a facility in satisfactory compliance with regulations; and*
- 2. Applicants for adult day care centers and child welfare agencies if notified by the department that such training is unavailable.*

22 VAC 40-80-140. The initial application.

A. Upon request, the department will provide an application form for a license to operate a facility or agency. There are a number of licensing offices located throughout the state. ~~The location, telephone number, and areas served by each office are provided in Attachment I of this document.~~

B. The department ~~shall~~ will consider an application complete when the application fee and all the required information is submitted in the form required by the department. The schedule of fees for licenses is provided in 22 VAC 40-160-40 ~~et seq.~~, Fee Requirements for Processing Applications. If the department finds the application incomplete, the applicant will be notified *in writing* within 15 days of receipt of the incomplete application. *If the applicant does not resubmit a complete application within 30 days from the notification, all materials except the nonrefundable fee will be returned to the applicant.*

C. The applicant shall complete and submit the application to the department at least 60 days prior to a planned opening date to allow the department time to act on the application.

D. The applicant may withdraw a request for a license.

22 VAC 40-80-150. Approval of buildings and functional design features.

A valid certificate of occupancy is one prerequisite for licensure. When an application is for licensure of a building ~~which that~~ has not previously been used for the type of license or use group being sought, or when renovations are made in the building, the department must approve functional design features of the building in accordance with applicable department regulations. The procedures are as follows:

1. Prior to beginning construction or renovation, the applicant or prospective applicant shall submit to the department floor plans ~~which that~~ clearly indicate the use of space and other plans for compliance with all requirements for the building, ~~use of space, and bathroom facilities and physical environment~~ contained in the applicable regulations.

(NOTE: Applicants and prospective applicants are urged to present their plans for compliance with departmental regulations to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations. Architects, contractors, or building officials may not be thoroughly familiar with these functional design requirements, and costly errors can be avoided through early review by the department. ~~The plan for structures must clearly indicate the use of space.~~)

2. The department will notify the applicant or prospective applicant within 10 working days of receipt if the plans to comply are incomplete, identifying the information still needed before the request can be considered complete.

3. When a complete plan is received, the department will issue *within 20 days* a Preliminary Approval Statement or a letter indicating disapproval of the plan and the reasons for disapproval.

(NOTE: A Preliminary Approval Statement does not imply that the department will approve the application for licensure since other factors will affect issuance decisions.)

4. All Preliminary Approval Statements are conditional upon there being no change in the proposal or the circumstances affecting them and upon approval of all required fire, health, or building officials.

5. The department will forward a copy of the Preliminary Approval Statement to the appropriate building official.

6. After construction or renovation, department staff will make an on-site inspection to evaluate compliance with the functional design requirements of the applicable regulations. Findings of this on-site inspection will be forwarded to the applicant and the local building official.

22 VAC 40-80-160. The investigation.

A. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.

EXCEPTION: Subsection A of this section does not apply to child placing agencies or family day systems.

1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.

2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code.

3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities ~~which~~ *that* shall include approval of general sanitation *and, if applicable*, water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.

B. The department's representative ~~shall will~~ make an on-site inspection of the proposed facility or agency and an investigation of the proposed services, as well as an investigation of the character, reputation, and financial responsibility of the applicant. Compliance with all standards will be determined by the Department of Social Services. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

NOTE: See 22 VAC 40-90, 22 VAC 40-190 or 22 VAC 15-50, as applicable.

C. The applicant or licensee shall make available to the department's representative the facility's or agency's books and records. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision.

EXCEPTION: Section 63.2-1702 of the Code of Virginia provides for an exception in regard to inspection of financial records of child welfare agencies under specified conditions.

D. After the on-site inspection the licensing representative ~~shall will~~ discuss the findings of the investigation with the administrator ~~or~~ , licensee *or designee*. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

E. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard ~~which that~~ creates a special hardship. (See Part V Allowable Variance (22 VAC 40-80-220 et seq.).)

22 VAC 40-80-170. Notice to the applicant of issuance or denial of a license.

A. When the investigation is completed, the department ~~shall will~~ notify the applicant of its decision regarding the issuance of a license.

~~B. When the decision is to issue a conditional or provisional license, a letter accompanying the license shall refer to any areas of noncompliance with standards or areas where compliance cannot be determined, as well as any limitations on the license. The letter may also contain recommendations for the licensee's consideration. A letter will routinely not accompany the issuance of a regular license.~~

~~C. B.~~ When the department intends to deny the license, the department ~~shall will~~ send a letter stating the reasons for this action and the applicant's right to appeal the decision. (See Part VIII (22 VAC 40-80-330 et seq.).)

22 VAC 40-80-180. Determination of continued compliance (renewal and monitoring ~~visits inspections~~).

A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative ~~shall will~~ make announced and unannounced ~~visits to inspections~~ of the facility or agency during the hours of its operation. The licensee is responsible for correcting any areas of noncompliance found during renewal or monitoring ~~visits inspections~~.

B. All licensed child welfare agencies shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.

~~C. At least two inspections of each licensed adult care facility shall be made each year and in every instance the renewal inspection shall be unannounced. The commissioner may authorize such other announced or unannounced inspections as he considers appropriate. All adult care facilities issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of~~

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those inspections shall be unannounced. All adult care facilities issued a license for a period of one year shall be inspected at least three times each year, and at least two of those inspections shall be unannounced. All adult care facilities issued a license for a period of two years shall be inspected at least two times each year, and at least one of those inspections shall be unannounced. All adult care facilities issued a license for a period of three years shall be inspected at least one time each year, and that visit shall be unannounced.

D. The department's representative may also make such ~~visits~~ ~~to inspections~~ of any homes or facilities that are approved by the licensee for the placement or care of children as one of the licensed services of the agency.

E. For any licensed assisted living facility, adult day care center, or child welfare agency, the department may conduct such other announced or unannounced inspections as are considered appropriate.

NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced ~~visits~~ inspections made to licensed facilities during the year.

22 VAC 40-80-190. Modification.

A. The licensee may request a modification of the terms of a license at any time during the period of the license. The request must be submitted in writing to the department's representative.

The department will evaluate written information about any planned changes in operation ~~which~~ that would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may ~~visit~~ inspect the facility during the process of evaluating a proposed modification.

Examples of such changes are: changes in the number of children or adults to be served, staff responsibilities, availability and use of the physical plant, and changes in program focus or needs of the population to be served.

B. If a modification can be granted under the standards, the department ~~shall respond in writing with the modified license~~ will issue a modified license reflecting the changes. In the event that a new application is needed, ~~the licensee shall receive written notification of such. When the or the~~ modification cannot be granted, the licensee ~~shall also~~ will be advised by letter.

22 VAC 40-80-200. Early compliance.

A. A provisional or conditional license may be voided and a regular license issued when all of the following conditions exist:

1. The facility or agency complies with all standards listed on the face of the provisional or conditional license ~~well in advance prior to the mid-point of the licensure period or within 90 days~~ of the expiration date of the provisional or conditional license, *whichever comes first*, and the facility or agency is in substantial compliance with all other standards.

2. Compliance has been verified by an on-site observation by the department's licensing representative or, when applicable, by written evidence provided by the licensee.

3. All other terms of the license remain the same.

B. The licensee shall make a written request to the licensing representative for replacement of a provisional or conditional license with a regular license.

C. When the request is approved by the department, the effective date of the new regular license ~~shall~~ will be the same as the beginning date of the voided license. When the request is not approved, the reasons for this action ~~shall~~ will be confirmed to the licensee in writing.

D. Early compliance shall not be considered once ~~a renewal application has been filed~~ by the facility or agency *has filed a renewal application*.

22 VAC 40-80-210. Renewal process.

A. The department ~~shall~~ will send an application for renewal of the license to the licensee prior to the expiration date of the current license. *The licensee shall submit the completed application form, including all attachments and the licensing application fee, in a timely manner to assure adequate time for processing by the department. In order for the application to be considered complete, the licensee must have paid any outstanding civil penalty assessed in a case decision.*

~~B. The licensee shall submit the completed application form along with any required attachments and the application fee prior to the expiration of the current license. It is the applicant's responsibility to complete and return the application prior to the expiration of the current license to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect provided that the completed application was filed and a decision for licensure is pending. The department will not process a renewal application that is not complete or when the current license is being denied or revoked in accordance with the provisions of the Administrative Process Act.~~

~~C. Should a current license expire before a new license is issued, the current license shall remain in effect provided that a complete application was filed prior to expiration of the current license and a decision for licensure is pending.~~

~~G. D. The department shall~~ will follow the procedure for investigation and notice to the applicant previously outlined in 22 VAC 40-80-160, 22 VAC 40-80-170, and 22 VAC 40-80-180.

PART V.

USE OF ALLOWABLE VARIANCE VARIANCES.

22 VAC 40-80-220. Use of allowable variances. (Repealed.)

~~Allowable variances are used for one or more of the following:~~

~~1. To allow the department some degree of flexibility in the enforcement of requirements, given the rapid and ever changing nature of programs and their unique settings;~~

~~2. To allow for greater development of innovative and pilot programs, which were not anticipated in the regulations; and~~

~~3. To promote equity across all programs by allowing for variable compliance methods when a regulation places special hardship on a particular facility.~~

22 VAC 40-80-230. Conditions for initiating a request.

A licensee or applicant may request an allowable variance when he believes that the existing ~~regulations pose standard or requirement poses a special~~ *substantial financial or programmatic* hardship and when he believes that either an alternative method of compliance with the intent of the ~~regulation which standard that~~ is causing the hardship, or the actual suspension of all or part of that ~~regulation standard~~, would neither endanger the safety or well-being of persons in care nor create a violation of statutes or of the requirements of another regulatory agency.

22 VAC 40-80-240. Process.

~~A. Consideration of an allowable variance is initiated when a written request to the licensing office is received from the applicant or licensee. The licensee or applicant shall make a written request for consideration of an allowable variance. The department's licensing representative may provide consultation to the applicant or licensee in the development of the written request and throughout the allowable variance process.~~

~~1. The licensee or applicant shall make a written request for an allowable variance which describes~~ *describe* the special hardship or hardships to the existing program or to a planned innovative or pilot program *that will be* caused by the enforcement of the requirement or requirements.

~~2. When possible,~~ The licensee or applicant shall propose alternatives to meet the purpose of the requirement ~~which~~ *that* will ensure the protection and well-being of persons in care.

~~3. The licensee or applicant should~~ *shall* obtain, when requested by the department, the opinions of professionals in the field or documented research, or both, that the proposed activities, facilities, or equipment are not injurious to persons in care.

~~4. The department can authorize allowable variances only to its own licensing standards, not to regulations of another agency or to any requirement in federal, state, or local laws.~~

~~B. The department's licensing representative shall will notify the petitioning applicant or licensee of the receipt of his request for an allowable variance and send a recommendation to the person delegated decision making authority by the department the department's decision.~~

~~The decision is transmitted in writing to the petitioning applicant or licensee with a copy to the department's licensing representative.~~

C. Approval.

~~1. The designated authority~~ *department* may attach conditions to the granting of the allowable variance in order to protect persons in care.

~~2. Allowable variances are conditional upon there being no change in the circumstances which that~~ were the basis for the approval. Any allowable variance may be rescinded or modified if *needs* or conditions change; additional information becomes known ~~which that~~ alters the basis for the original decision; the applicant or licensee fails to meet any conditions attached to the allowable variance; or results of the allowable variance jeopardize the safety, comfort, or well-being of persons in care.

~~3. Allowable variances expire automatically when there is a change in the facility's location or a change in the sponsorship of the facility or agency.~~

EXCEPTION: Allowable variances issued to private child placing agencies and family day systems are transferable when agencies change location.

~~4. The department's licensing representative shall will~~ review each allowable variance at least annually. At minimum, this review shall address the impact ~~if of~~ the allowable variance on persons in care, adherence to any conditions attached, and the continuing need for the allowable variance.

D. Denial.

~~1. When the decision is to deny a request for an allowable variance, the reason or reasons shall will~~ be provided in writing to the applicant or licensee.

~~2. When a request for an allowable variance is denied, it may be reconsidered if the applicant or licensee submits another written request and provides new or additional supporting information within 30 days of denial.~~

NOTE: After the 30-day period, the applicant or licensee may submit a new allowable variance request describing changed conditions.

~~3. When a request for an allowable variance is denied by the designated decision maker and if the petitioner believes that decision was unreasonable, arbitrary, or capricious, the petitioner may request a desk review of that decision. The following shall apply when a desk review is requested:~~

~~a. The petitioner shall request this desk review, in writing, within 15 days of the issuance of the denial and shall include such information as necessary to explain the belief that the decision was unreasonable, arbitrary, or capricious.~~

~~b. The desk review shall be conducted by the person who supervises the designated decision maker, unless a different person has been assigned desk review responsibility by the Director of the Division of Licensing Programs.~~

~~c. The decision of the reviewer shall be reported in writing to the petitioner within 30 days of receiving a complete request for a desk review.~~

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~~d. 3. The reviewer's decision shall be final and not appealable. The department will reconsider the new request and the additional information and will notify the applicant or licensee of the decision within 30 days of receipt of the second request. This decision will be considered final and is not appealable.~~

E. When an allowable variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed.

F. The applicant or licensee may at any time withdraw a request for an allowable variance.

PART VI. PROBLEM SOLVING CONFERENCES.

22 VAC 40-80-260. First step review.

A. The applicant or licensee may request either a desk review by, or a meeting with, the assigned licensing representative's immediate supervisor.

B. If the request stems from a desire to contest the findings or conclusions of an inspection, the following procedures shall apply:

1. The applicant or licensee shall make the request within 15 days of receiving the compliance plan.
2. The request shall specify the contested finding or conclusion and shall specify whether a desk review or conference is being requested.
3. The request shall include the applicant's or licensee's reasons or other evidence supporting the request for a review or a conference.

C. The first step informal desk review or conference will be held at the supervisor's office unless the supervisor designates a different location. The following procedures shall apply:

1. The supervisor ~~shall will~~ report the findings of a desk review in writing within 10 days of receiving the request and supporting materials or ~~shall will~~ hold the requested conference within 30 days of receipt of such request and materials.
2. When the request is for a conference, the supervisor ~~shall will~~, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by the supervisor.

22 VAC 40-80-270. Second step review.

A. If after the first step review, the applicant or licensee believes that the laws, regulations, or departmental policies have been applied or interpreted in a manner that was unreasonable, arbitrary or capricious, he may request a second step review by program supervisory personnel as assigned by the Director of Licensing Programs according to the provisions of this section.

B. A second step review shall not be requested to challenge the content of an established law, regulation, or policy.

However, the application of a law, regulation, or policy may be challenged.

~~C. When a second step review is requested, the request must be in writing and must specify whether the applicant or licensee is requesting a desk review or a conference. Conferences shall be held in the region or in Richmond as designated by the director; the designated location shall be as close to the operation as possible.~~

D. The second step review request shall:

1. Be made within 15 days of the date of the first step response;
2. Specify the reason for requesting the second step informal review and include such information, explanation, or additional materials as necessary to support the applicant's or licensee's belief that the decision reached at the first step was unreasonable, arbitrary, or capricious; and
3. Include a copy of relevant materials and correspondence developed at the first step of the informal appeal process.

E. Within 30 days of receipt of this request, the director's office ~~shall will~~ respond in writing ~~or schedule the conference with the results of the desk review or schedule a conference.~~

~~F. When the request is for a conference, the designated program management staff shall, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by program management staff.~~

PART VII. COMPLAINT INVESTIGATION.

22 VAC 40-80-290. Receipt of complaints.

Complaints may be received in written or oral form and may be anonymous. The department maintains a ~~parental hot line to respond to complaints regarding child care operations toll-free telephone line to receive complaints on all licensed facilities.~~

22 VAC 40-80-300. Investigation of complaints.

The department has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse and neglect of persons in care.

NOTE: In an investigation ~~of involving suspected~~ adult or child abuse, neglect, or exploitation in a licensed facility, the investigation ~~shall will~~ be conducted jointly with the local department of social services whenever possible in accordance with departmental policy.

22 VAC 40-80-310. Notification of findings.

When the investigation is completed, the licensee ~~shall will~~ be notified of the findings of the investigation. Any necessary corrective action will be identified.

PART VIII.
SANCTIONS.

22 VAC 40-80-330. Violation of standards or statutes.

A. The Commissioner of the Department of Social Services may impose such sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care. ~~Such sanctions include administrative sanctions and the imposition of a civil penalty or appointment of receivership.~~

B. The following reasons may be considered by the department for the imposition of administrative sanctions:

1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;
2. Permitting, aiding or abetting the commission of any illegal act in the licensed facility or agency;
3. Engaging in conduct or practices that are in violation of statutes and standards relating to abuse, neglect, or exploitation of children or adults; or
4. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.

22 VAC 40-80-340. Administrative sanctions.

~~The following are administrative sanctions which may be imposed against a licensed facility:~~

1. ~~Reducing the capacity of any licensed facility;~~
2. ~~Restricting or prohibiting new admissions to any licensed facility;~~
3. ~~Placing a child welfare agency on probationary status;~~
4. ~~Mandating training for the licensee or staff of a child welfare agency with any costs to be borne by the licensee;~~
5. ~~Denying renewal of the license of any licensed facility; and~~
6. ~~Revoking the current license of any licensed facility.~~

The commissioner may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation in assisted living facilities, adult day care centers and child welfare agencies as discovered through any inspection or investigation conducted by the Department of Social Services, the Virginia Department of Health, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, or by state and local building or fire prevention officials. These administrative sanctions include:

1. *Petitioning the court to appoint a receiver for any assisted living facility or adult day care center;*
2. *Revoking or denying renewal of a license for any assisted living facility or adult day care center that fails to comply with the limitations and standards set forth in its license for*

violation that adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of residents, or for permitting, aiding or abetting the commission of any illegal act in an adult care facility;

3. *Revoking or denying renewal of a license for any child welfare agency that fails to comply with the limitations and standards set forth in its license;*

4. *Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709 D of the Code of Virginia. These include:*

- a. *Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of residents, participants or children are at risk;*
- b. *Reducing the licensed capacity or prohibiting new admissions when it has been determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;*
- c. *Requiring that probationary status announcements and denial and revocation notices be posted in a conspicuous place on the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violation;*
- d. *Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when it has been determined that the lack of such training has led directly to violations of regulations;*
- e. *Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee is substantially out of compliance with the terms of its license and the health and safety of residents, participants or children are at risk;*
- f. *Requiring licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and*
- g. *Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.*

22 VAC 40-80-350. Civil penalty or appointment of receivership. (Repealed.)

~~In addition to the administrative sanctions listed in 22 VAC 40-80-340 the commissioner may:~~

1. ~~Petition the circuit court or the city or county in which the facility is located to impose a civil penalty against any adult care facility; or~~
2. ~~Petition the circuit court for the city or county in which the facility is located to appoint a receiver for any adult care facility.~~

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~~22 VAC 40-80-360. Imposition of sanctions or civil penalties. (Repealed.)~~

~~The following reasons may be considered by the department for the imposition of administrative sanctions or the imposition of civil penalties:~~

- ~~1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;~~
- ~~2. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility or agency;~~
- ~~3. Engaging in conduct or practices which are in violation of statutes and standards relating to abuse, neglect, or exploitation of children or adults; or~~
- ~~4. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.~~

22 VAC 40-80-370. Appeal process.

A. The applicant or licensee will receive a notice of the department's intent to impose an administrative sanction. This notice ~~shall~~ *will* describe the ~~sanction or sanctions and the reasons for the imposition of the administrative sanction.~~ *Service of the notice of adverse action is achieved by mailing the notice to the applicant or licensee, unless service is made by other means and acknowledged by the applicant or licensee. If the applicant or licensee wishes to request an informal conference or, when available, an administrative hearing, he shall have 15 days after service of the notice to make such a request. If service is accomplished by mail, three days shall be added to the 15-day period.*

B. Upon receipt of the notice to impose an administrative sanction, the applicant or licensee has the right to appeal the decision in accordance with the Administrative Process Act (~~§ 9-6.14:1~~ § 2.2-4000 et seq. of the Code of Virginia). The procedures for filing an appeal ~~shall~~ *will* be outlined in the notice. All appeals from notice of imposition of administrative sanctions ~~shall be received in writing from the applicant or licensee within 15 days of the date of receipt of the notice.~~ *The applicant or licensee shall submit any appeal of imposition of an administrative sanction in writing within 15 days of receipt of the notice.*

~~C. In the event the applicant or licensee does not request an appeal within 15 days, the facility or agency must modify the operation to conform to the pertinent law or regulation or accept imposition of the sanction.~~

~~D. If the facility or agency continues to operate in violation of the imposed sanction or sanctions after the date the sanction or sanctions were to have been met, the department shall initiate appropriate administrative or legal action.~~

~~E. In requesting the imposition of a civil penalty for any violation in an adult care facility, the department will recommend that the penalty not exceed the lesser of \$5.00 per licensed capacity or \$250 per day for each day the adult care facility is in violation, beginning on the date the facility was first notified of the violation. The date of notification under~~

~~this sanction shall be deemed to be the date of receipt by the facility of written notice of the alleged violation. This notice shall include specifics of the violation charged and it shall be hand delivered or sent by overnight express mail or by registered or certified mail, return receipt requested.~~

~~C. If the applicant or licensee fails to request an informal conference within 15 days of receipt of the notice, the notice will constitute the department's final decision. The decision will take effect 30 days after receipt of the notice.~~

~~F. Upon filing of a petition for appointment of a receiver, the court shall hold a hearing, at which time the department and the licensee of the adult care facility may participate and present evidence.~~ *D. The appeal process available is governed by law. Where the sanction is imposed by means of a special order as provided in § 63.2-1709 of the Code of Virginia, the case decision is issued by the commissioner following findings and conclusions resulting from the informal conference. Other sanctions include a provision for an administrative hearing, which is described in § 2.2-4020 of the Code of Virginia, prior to the issuance of the case decision. For ease of reference, the process steps are displayed in the following chart:*

List of Sanctions with Appeal Provisions

	<i>Informal Conference</i>	<i>Administrative Hearing</i>	<i>Circuit Court Review of Case Decision</i>
ADMINISTRATIVE SANCTION			
<i>Place licensee on probation</i>	X		X
<i>Reduce licensed capacity</i>	X		X
<i>Restrict admissions</i>	X		X
<i>Mandate training for licensee or staff</i>	X		X
<i>Assess civil penalty</i>	X		X
<i>Require written contact with responsible persons</i>	X		X
<i>Prevent receipt of public funds</i>	X		X
<i>Deny application for new or renewal license</i>	X	X	X
<i>Revoke license</i>	X	X	X
<i>File petition for appointment of a receiver</i>			X

22 VAC 40-80-375. Failure to pay civil penalty.

A. *If an outstanding civil penalty assessed after a case decision is not paid as required, the commissioner shall have the authority to:*

- 1. Assess a late fee if the civil penalty payment is 60 days overdue;*
- 2. Reduce the duration of the licensure period if the civil penalty payment is 60 days overdue; and*

3. Deny renewal or revoke the license if the civil penalty payment is 90 days overdue.

B. The department will also institute legal collection procedures to collect unpaid penalties.

22 VAC 40-80-380. Appeals. (Repealed.)

~~A. Any applicant or licensee has the right to appeal the department's decision to impose an administrative sanction.~~

~~B. Appeals may be heard through an informal conference or a formal hearing.~~

~~C. If the applicant or licensee requests an appeal, he has the right to be represented by counsel at the conference or hearing.~~

~~D. An informal conference is the initial hearing of evidence in making a case decision, unless there is a waiver or agreement between the parties to go directly to a formal hearing. An informal conference shall be conducted by the department's designee.~~

~~E. In the event of an adverse decision following the informal conference, the applicant or licensee may request a formal hearing.~~

~~A formal hearing shall be conducted by an individual appointed from a roster of attorneys approved to serve as hearing officers. This roster is maintained by the Supreme Court of Virginia.~~

~~F. Once the informal conference or formal hearing is completed, the applicant or licensee shall receive written notice of a decision.~~

~~The department's designee shall render a decision within 90 days of the informal conference or from a later date agreed to by the applicant or licensee and the agency.~~

~~A hearing officer shall render findings and recommendations within 90 days from the date of the formal hearing or from a later date agreed to by the applicant or licensee and the agency.~~

~~The commissioner shall render a decision within 30 days from the date that the agency receives the hearing officer's recommendation.~~

~~G. If the commissioner authorizes the imposition of the sanction or sanctions, the time frame in which the facility or agency must conform to the requirements of the sanction or sanctions shall be included in the final order. The applicant or licensee may appeal the decision to the appropriate circuit court under the provisions of §§ 63.1-180 and 63.1-194.10 of the Code of Virginia.~~

~~H. If the licensee wishes to appeal the imposition of a civil penalty or the appointment of a receiver, such appeal must be made to the appropriate court in the city or county where the facility is located.~~

PART IX.
HEARINGS PROCEDURES.

22 VAC 40-80-390. Scope.

The appeal process as set forth in this part shall apply whenever the Department of Social Services takes adverse action on a license for an assisted living facility, adult day care center or child welfare agency. Therefore, whenever the department either revokes or refuses to issue or renew a license or imposes any other sanction for an assisted living facility, adult day care center, or child welfare agency, the procedures specified in this part to produce a case decision shall be initiated.

22 VAC 40-80-400. Statutory basis for appeal process.

The Department of Social Services is mandated by statute to enforce the standards adopted by the State Board of Social Services or the Child Day Care Council pursuant to § 63.2-1734 of the Code of Virginia, regarding facilities required to be licensed under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia. As part of this enforcement duty, §§ 63.2-1709 D and 63.2-1710 of the Code of Virginia require that the procedures under the Administrative Process Act (§ 2.2-4000 et seq., of the Code of Virginia) shall apply whenever the department takes adverse action.

22 VAC 40-80-410. Duties of the hearing coordinator.

The hearing coordinator is the person designated by the Department of Social Services to perform certain administrative functions involved in setting up and carrying out the appeal process. The hearing coordinator's duties include, but are not limited to, the following:

1. Making a request to the Supreme Court for a hearing officer upon timely request for a formal administrative hearing.
2. Scheduling the date, time and location for the hearing.
3. Ensuring that a court reporter has been hired to record the hearing.
4. Preparing appropriate material for distribution to all participants. This includes the appointment of the hearing officer, preparing the notice of the hearing, and preparing the forms for the hearing officer to subpoena witnesses. It also includes submission of documents in the record, appropriate standards and any other pertinent information to all participants.
5. Monitoring the status of proceedings and the observance of timeframes throughout the appeal process.

22 VAC 40-80-420. Informal conference.

A. Section 2.2-4019 of the Code of Virginia provides the aggrieved party the right to request an informal conference. In the case of administrative sanctions that include a provision for an administrative hearing, the named party and the agency may consent to waive such a conference to go directly to the hearing.

B. The informal conference is a fact-finding process. The purpose of an informal conference is to give the aggrieved party an opportunity to present information or evidence he

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believes indicates that the intended sanction was based on factual error or on misinterpretation of facts, or to determine if the dispute may be resolved by consent. The department will decide if the conference will be open to the public.

C. If the aggrieved party believes the matter can be resolved by consent, a written proposal must be submitted to the department-appointed chair of the conference no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the conference.

D. Following the informal conference, the chair will prepare a written report and recommended decision to the department that will include statutory authority or legal basis for the remaining steps in the administrative appeals process; a summary of the conference; the previous disposition as set out in the notice of adverse action, i.e., those issues on appeal; the findings of fact; the description of evidence; and the recommended decision or options. Within 90 days from the date of the informal conference, or from a later date agreed to by the aggrieved party and the agency, the department will issue its official decision in writing to the aggrieved party, including information concerning the named party's right to continue his appeal. The written report prepared by the chair will be attached to the letter and will be incorporated by reference.

E. When an informal conference is conducted following notification of an intent to issue a special order, the issuance of the special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. Service of the decision following the informal conference shall be achieved by mailing the decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If the licensee wishes to appeal the decision, he shall have 30 days after service of the notice to make such a request. If service is accomplished by mail, three days shall be added to the 30-day period. Any appeal following an informal conference related to special orders shall be made to the circuit court. All other appeals shall follow procedures set forth in the Administrative Process Act.

22 VAC 40-80-430. Consent agreements.

A. A consent agreement may be proposed by a licensee in lieu of adverse action. The proposed consent agreement shall be submitted no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the informal conference. The duration and terms of the consent agreement are negotiable. A licensing representative will negotiate the proposed agreement with the licensee and submit the proposed agreement to the division director, who will make the decision to accept or reject the consent agreement on behalf of the department or recommend such acceptance or rejection to the commissioner.

B. Elements of an acceptable consent agreement. An acceptable consent agreement shall contain the following specific elements:

1. Dates of key actions, such as letter of sanction, timely appeal, the informal conference (if already held), and the names of the parties;
2. The assertion that all violations detailed in the letter of denial or revocation have been corrected or will be corrected by a time specified in the proposed agreement;
3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the past history of violations, including the methods the licensee has in place to prevent violations and to monitor results;
4. A statement agreeing to future maintenance of substantial compliance with all regulations;
5. Statements outlining and acknowledging the process and timelines for moving the proposed agreement through the steps that will follow submission of the proposal signed by the provider, including statements that (i) the Director of the Division of Licensing Programs will evaluate the proposal and respond by letter and (ii) the licensee understands that if the proposal is conditionally accepted, final approval and the division director's signature will be withheld until after satisfactory on-site verification of results, including the information that the duration of the agreement will begin when the director accepts and signs the document;
6. The duration of the consent agreement, including the information that the period begins when the division director signs;
7. A statement that when the division director signs the agreement, signifying final acceptance, the division director is also agreeing to rescind the outstanding adverse action and that the licensee is agreeing to withdraw all appeals to that action; and
8. A statement outlining conditions for termination of the final agreement for cause and the nature of the licensee's appeal rights in that event.

C. Recommendation and approval process.

1. The department appointed negotiator will review the draft agreement and either make a final suggestion or advise the licensee that a recommendation will be made to the division director.
2. Two originals of the final proposal, signed by the licensee and dated, shall be mailed to the negotiator.
3. The negotiator will review the submissions to assure conformity with his expectations and return them to the division director with any recommendations.
4. The division director will review the proposal and write to the licensee, copying the negotiator, either affirming conditional approval to proceed to verification stage or stating changes required before the proposal will be conditionally approved.
5. Licensing staff will perform on-site verification, advise the division director of results, and submit a written recommendation with rationale.
6. If the results warrant it, the division director will prepare a cover letter enclosing one of the original signed consent

agreements, and will forward a copy to the licensing unit and all other parties who were copied on the adverse action letter.

7. If the on-site inspection is unsatisfactory, the division director will advise the licensee by letter.

D. Oversight responsibilities during the effective dates of consent agreements. Throughout the duration of the consent agreement, licensing staff will make frequent inspections to determine whether the terms of the consent agreement are being implemented and whether its intended results are being achieved.

22 VAC 40-80-440. Acknowledgment of request for an administrative hearing.

Upon receipt of the written request from the aggrieved party for an administrative hearing pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia, a hearing will be scheduled in the locality where the aggrieved party operates unless he expressly waives this venue provision (§ 8.01-261 of the Code of Virginia). The hearing coordinator will request appointment of a hearing officer from the list of qualified attorneys kept by the Supreme Court of Virginia. After a hearing officer is appointed and duly designated by the commissioner, a notice of hearing will be sent to the aggrieved party with a copy to the agency representative for the case. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia. After the hearing officer is appointed, the hearing coordinator will forward a copy of the relevant licensing standards and appeal procedures to the hearing officer. The hearing coordinator will not be directly involved in any investigation or litigation function in connection with the case.

22 VAC 40-80-450. Continuances.

A request for continuance shall be made to the hearing officer at least five days prior to the time designated for the hearing, except in cases of emergency. No continuance of an administrative hearing shall be granted except at the discretion of the hearing officer, for good cause shown and with due consideration of the potential risks to residents, participants or children in the facility from extended exposure to conditions detailed in the agency's revocation or denial letter. All parties involved in a hearing shall avoid delay caused by unnecessary postponements or continuances so that a decision can be made expeditiously.

22 VAC 40-80-460. Recesses and postponements.

The hearing officer has authority to grant recesses and postponements where necessary for the convenience and comfort of the parties, witnesses, and the court reporter.

22 VAC 40-80-470. Prehearing conferences.

The hearing officer has the statutory power to hold conferences for the settlement or simplification of issues by the parties. The hearing officer may hold a prehearing conference for the stipulation of certain facts or for any other purposes that might be accomplished by such a preliminary process. It may be useful for the hearing officer to direct the parties to submit to him and exchange in advance of the conference: proposed statements of issues, proposed

stipulations, requests for information, statements of position, proposed procedural data, and the exchange of exhibits. The notice for such a prehearing conference must be established by the hearing officer as to the date, time and place for such conference. It will not be necessary to provide a verbatim reporting of the prehearing conference. A report summarizing the results of this conference must be prepared, consisting of a list of appearances, agreements reached, the hearing officer's rulings, and other matters decided. A copy of this report shall be provided to all persons who entered appearances, which shall become part of the agency record.

22 VAC 40-80-480. Conduct of hearing.

A. To initiate the proceedings, the hearing officer will call the hearing to order and make a brief statement giving the name of the proceeding, its case number, the names of all persons present and involved in the proceeding, and other appropriate introductory remarks such as the general rules of decorum and conduct. The parties shall be entitled to be accompanied by and represented by counsel. Before the formal presentation of evidence begins, the parties should be given an opportunity to bring up any preliminary matters or motions. If a hearing officer has questions or issues regarding the procedures in the hearing or his role in conducting the hearing, these questions shall be directed to the hearing coordinator. The parties at administrative hearings have the right to conduct cross-examination to obtain full and fair disclosure of the facts. The hearing officer will decide if the hearing will be open to the public.

B. The following shall be the order of proceedings at all hearings, subject to modification by the hearing officer before such hearing is commenced, for good cause:

1. Presentation, argument, and disposition of all preliminary matters and motions.

2. Presentation of opening statements. Such statements are not subject to cross-examination or an opportunity to present argumentative testimony.

3. Agency representative presents the case, calling witnesses in such order as is seen fit. Each witness should be subject to direct, cross, and redirect examination. Both the counsel for the adverse party and the hearing officer may direct questions to the witness.

4. The aggrieved party should present its case, using the same guidelines as established in subdivision 3 of this subsection.

5. Rebuttal evidence by the agency representative should be permitted.

6. At the close of the presentation of evidence, the parties may exercise their rights pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. The parties, on request, shall be given the opportunity for closing argument and may submit for the record, in writing, proposed findings and conclusions.

22 VAC 40-80-490. Rules of evidence.

A. The burden of proof shall be upon the proponent. Therefore, if this is a situation where the department has

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revoked a license or imposed another administrative sanction subject to appeal by administrative hearing, the department is the proponent and has the burden of proof. However, in cases where the department has refused to grant an initial or renewal license, the proponent is the applicant and has the burden of proving that it should be granted a license.

B. The formal rules of evidence shall not apply. The hearing officer should receive any probative evidence, and should strike, on objection or own motion, evidence that is irrelevant, immaterial, insubstantial, privileged, or repetitive, as required by §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. If a question or answer at hearing is irrelevant, improper, or excludable, the hearing officer should strike it without waiting for an objection.

C. A party to the hearing may conduct examinations or cross examinations without rigid adherence to formal rules of evidence, provided the examination or cross examination does not become abusive or constitute harassment of the witness, and the examination can be shown to be necessary to result in full and fair disclosure of the facts bearing upon matters in issue. The hearing officer may examine all or any of the witnesses at the hearing.

22 VAC 40-80-500. The record at hearing.

All testimony in the administrative hearing must be recorded either stenographically or by mechanical means. All documents or other evidence received are also part of the record and must be maintained. In addition, a record must be maintained of all evidence offered but excluded. See Rule 2A: 3 (c) of the Rules of the Supreme Court of Virginia. As a matter of practice, it would be appropriate for the hearing officer to conditionally receive evidence and thereafter, if it is excludable, to avoid considering it in making the decision. In this way, if it is determined on judicial review that the hearing officer erroneously decided that the evidence was excludable, the case can be remanded for reconsideration of the evidence submitted but rejected as exhibits.

22 VAC 40-80-510. Recommendations of the hearing officer.

A. By statute, the hearing officer shall recommend findings of fact and a decision upon the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia.). The recommended decision of the hearing officer shall be made upon consideration and review of the record as a whole or such portions of the record as may be cited by any party to the proceedings. The findings of fact shall be based exclusively on admissible evidence or matters that are officially noticed. The recommendation shall be in writing and shall include specific findings on all the major facts in issue.

B. The hearing officer shall provide a recommendation within 90 days from the date the agency record is closed (that is, the date of the final hearing or the date by which the hearing officer prescribes that all evidence shall be submitted) or from a later date if agreed to by the aggrieved party and the agency (§ 2.2-4024 of the Code of Virginia). If the hearing officer does not render a recommended decision within 90 days, the named party to the case decision may provide written notice

to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no recommended decision is made by the hearing officer within 30 days from receipt of the notice, then the Executive Secretary of the Supreme Court, pursuant to § 2.2-4024 of the Code of Virginia, shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause can be shown for the delay.

C. The available remedies offered by the hearing officer shall be to (i) uphold the decision of the department; (ii) recommend reversing the decision; or (iii) recommend issuance of a different sanction as provided in § 63.2-1709 D of the Code of Virginia.

D. The findings, conclusions and recommended decision shall be provided to the parties and thereafter either party has 10 days to submit any exceptions in writing to the hearing coordinator for review by the commissioner regarding the recommended decision of the hearing officer. The hearing officer should incorporate the procedure for making exceptions to his recommended decision within the text of his report and recommendation.

E. The hearing officer shall forward the agency record, including the recommendation; all documents submitted by the parties; a listing of all exhibits presented, received and rejected; and the transcript of the hearing to the hearing coordinator.

22 VAC 40-80-520. Case decision.

A. The commissioner, after review of the findings of fact and recommended decision of the hearing officer, shall make a case decision and issue an order in the case within 30 days from the date that the commissioner receives the hearing officer's recommendation (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia). The commissioner shall provide notification to the aggrieved party of the decision within 30 days of receipt of the hearing officer's recommendation. If the commissioner does not render a decision within 30 days, the aggrieved party to the case decision may provide a written notice to the commissioner that a decision is due. If no decision is made within 30 days from the commissioner's receipt of the notice, the decision is deemed to be in favor of the aggrieved party. Service of the notice of the commissioner's decision is achieved by mailing the notice of the case decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If service is accomplished by mail, three days shall be added to the 30-day period. If the licensee wishes to appeal the decision, he shall have 30 days after service of the notice of case decision to make such request.

B. The signed original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy. The signed originals or facsimiles thereof, together with the full record or file of the case, shall be made available for public inspection or copying except as the agency may, in its discretion under § 2.2-4023 of the Code of Virginia, decide to withhold part or all of the records.

C. The provisions for appealing the commissioner's order in accordance with the Administrative Process Act are found at §§ 2.2-4025 through 2.2-4030 of the Code of Virginia.

D. When issuance or renewal of a license as an adult care facility has been refused by the commissioner, the applicant shall not thereafter for a period of one year apply again for such license. When issuance or renewal of a license for a child welfare agency has been refused by the commissioner, the applicant shall not thereafter for a period of six months apply again for such license.

EXCEPTION: An adult care facility or a child welfare agency may apply again for such license before the end of the applicable specified period if the commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application.

ATTACHMENT I

An application form to operate a private child placing agency may be obtained from the following office:

Division of Licensing Programs
Department of Social Services
Theater Row Building
730 East Broad Street
Richmond, Virginia 23219
Telephone: (804) 692-1782

An application form to operate a licensed facility, excluding a private child placing agency, may be obtained from the following offices:

OFFICE

Abingdon Licensing Office
Piedmont Region
190 Patton Street
Abingdon, VA 24210
Telephone: (703) 628-5171

AREA SERVED

Serving Counties of: Bland, Buchanan, Carroll, Dickenson, Grayson, Lee, Patrick, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe; Serving Cities of: Bristol, Galax, Norton

OFFICE

Central Regional Office
Wythe Building, Suite 130
1604 Santa Rosa Road
Richmond, VA 23229-5008
Telephone: (804) 662-9743

AREA SERVED

Serving Counties of: Amelia, Brunswick, Buckingham, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Westmoreland; Serving Cities of: Colonial Heights, Hopewell, Petersburg, Richmond, South Boston

OFFICE

Eastern Regional Office
Pembroke Office Park
Pembroke IV Office Building
Suite 300
Virginia Beach, VA 23462-5496
Telephone: (804) 473-2100

AREA SERVED

Serving Counties of: Accomack, Gloucester, Greenville, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, Surry, Sussex, York; Serving Cities of: Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg

OFFICE

Fairfax Licensing Office
Northern Region
3959 Pender Drive
Fairfax, VA 22030
Telephone: (703) 359-6733

AREA SERVED

Serving Counties of: Arlington, Loudoun, Fairfax; Serving Cities of: Alexandria, Fairfax, Falls Church

OFFICE

Northern Regional Office
320 Hospital Drive, Suite 23
Warrenton, VA 22186
Telephone: (703) 347-6300

AREA SERVED

Serving Counties of: Caroline, Culpeper, Fauquier, King George, Prince William, Rappahannock, Spotsylvania, Stafford; Serving Cities of: Fredericksburg, Manassas, Manassas Park

OFFICE

Piedmont Regional Office
Commonwealth of Virginia Building
210 Church Avenue, S.W., Suite 100
Roanoke, VA 24011-1779
Telephone: (703) 857-7920

VA.R. Doc. No. R03-41; Filed January 7, 2004, 10:38 a.m.

Title of Regulation: **22 VAC 40-141. Licensing Standards for Independent Foster Homes (amending 22 VAC 40-141-10 through 22 VAC 40-141-40, 22 VAC 40-141-60 through 22 VAC 40-141-130, 22 VAC 40-141-150, 22 VAC 40-141-170 through 22 VAC 40-141-210; adding 22 VAC 40-141-87).**

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until March 26, 2004.

(See Calendar of Events section)

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for additional information)

Agency Contact: Cynthia Carneal, Operations Consultant, Department of Social Services, 7 N. Eighth St., Richmond, VA 23219, telephone (804) 726-7140, FAX (804) 726-7132, or e-mail cynthia.carneal@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia grants the State Board of Social Services (board) the authority to adopt regulations as necessary or desirable to carry out Title 63.2. Section 63.2-1734 of the Code of Virginia states that the board shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under Title 63.2 and that the regulations shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. Independent foster homes are included in the definition of child welfare agencies as referenced in § 63.2-100 of the Code. The regulation is necessary to implement the required code provisions.

Purpose: The major purposes of the amended regulation are to incorporate statutory changes in the Code of Virginia and to include amendments that would allow parents and legal guardians the option to retain custody of their child during the placement in an independent foster home, strengthen the safety requirements, distinguish between the needs of young children and adolescents, update medical requirements and background check requirements for providers, and clarify requirements regarding capacity and the qualifications of providers. Additionally, the purpose of amending the regulation includes prohibiting physical restraint techniques being used on children in independent foster homes and to include language regarding the responsibilities of the licensee. The amendments are considered essential to protect the health, safety and welfare of children who are temporarily placed by their parents or legal guardians directly into a foster home, independent of local departments of social services or a licensed child-placing agency.

Substance: Change the title from "Minimum Standards for Licensed Independent Foster Homes" to "Licensing Standards for Independent Foster Homes."

The primary Code of Virginia changes reflected in the proposed regulation are:

1. Updating necessary Code of Virginia references as a result of recodification;
2. Including statements requiring sworn statements of affirmation and criminal record checks in addition to a search of the Child Protective Services Central Registry; and
3. Amending definitions to reflect changes in the Code of Virginia as a result of recodification.

Other changes include:

1. Providing for "placement agreements" to be accepted in licensed independent foster homes as an option to an entrustment agreement, allowing parents to retain legal custody during a child's placement;

2. Introducing requirements for placing agreements and individualized service plans;

3. Amending the length of a child's placement in an independent foster home to "not longer than 180 days" with an exception that placement may exceed 180 days for reasons of parental illness/recuperation or military deployment if that was the reason for the placement and the provider then refers the child to the local department of social services to request an assessment of the care and custody of the child to determine if additional services or evaluations are necessary;

4. Deleting the exception to the experience and training requirements for licensed and registered family day care home providers and family day care homes approved by licensed family day care systems when providing foster care to children enrolled in the day care home;

5. Adding a statement that the provider shall be responsible for the home's day-to-day operation and for meeting licensing requirements;

6. Requiring the provider, and any assistants left alone with children, to be able to speak, read, and write in English sufficient to understand and carry out the responsibilities and requirements of the standards to ensure the care, safety and protection of children;

7. Allowing the provider to complete initial foster parent orientation and training sessions offered by local departments of social services and licensed child-placing agencies to meet the training requirements during the first six months of initial licensure as an independent foster home;

8. Requiring the provider, any assistants, and any other adults expected to be alone in the home with children to receive, prior to licensure or employment, certification in first aid and cardiopulmonary resuscitation;

9. Including "other adults expected to be alone in the home with children" among those required to maintain a current certificate in first aid and cardiopulmonary resuscitation;

10. Revising the medical requirements for the provider, assistants and household members to no longer require tuberculin skin tests for children and to permit assessments for the risk of tuberculosis infections and disease to be acceptable for providers, assistants, and adult household members, as appropriate; requiring subsequent screening or testing, as appropriate, every two years thereafter; and requiring evaluations for any individual who comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms;

11. Clarifying the maximum number of children in an independent foster home to include "any other children who reside in the home";

12. Requiring drinking water to be available at all times unless prohibited by a physician's order;

13. Including special diets prescribed by a dentist and recognizing and respecting established religious dietary practices observed by individual children;

14. Strengthening the transportation requirements to include providers not “knowingly” allowing children to be transported by any person who has driving violations that place the occupants of the vehicle at risk, and allowing for parents or legal guardians of a child placed in the independent foster home to be exempt from this requirement when transporting their own child unless it poses an immediate danger to the health and safety of that child;

15. Strengthening the transportation requirements to require providers to report subsequent driving violations to the licensing representative and provide a copy of the provider’s and assistant’s driving record upon licensure renewal;

16. Ensuring that first aid supplies are easily accessible to adults, but not to children under the age of 13; prescription and nonprescription medications are inaccessible to children under the age of 13; and allowing the providers to permit self-administration of medication by a child under certain circumstances;

17. Adding missing children, death of a child, or any placement outside of the foster home to the list of reportable incidents;

18. Prohibiting the use of physical restraint on children in the independent foster home;

19. Distinguishing between the supervision requirements of young children and children with special needs and the supervision requirements for adolescents during the use of time-out or separation as a discipline technique;

20. Including additional physical accommodation requirements, e.g. bathroom requirements and crib requirements; and

21. Adding home safety requirements that include, but are not limited to, listing poison control numbers by each telephone; placing child-resistant covers over all outlets when caring for children who are developmentally delayed to a preschool level; placing infants on their backs to sleep; not using portable cribs, play yards, or playpens as sleeping accommodations; prohibiting children who are under age 10 or who have motor or developmental delays from using the upper levels of a bunk bed; and immunization and other safety requirements for pets.

Issues: The public is expected to benefit from this regulation. The regulation strengthens the protections offered to children who are temporarily placed by their parents or legal guardians directly into a foster home, independent of local departments of social services or a licensed child-placing agency. The proposed amendments strengthen the authority and rights of parents by establishing an option allowing them to temporarily place their child in an independent foster home while retaining legal custody. This change enables the family to select whether temporarily entrusting a child to the provider or temporarily placing a child with a placing agreement best meets the family’s specific needs and circumstances.

The department does not anticipate any increase in the workloads of local departments of social services or the local juvenile and domestic relations court as a result of this regulation. The proposed amendments, while strengthening

the protections of children, should not pose any unreasonable hardship to licensees.

The department sees no disadvantages to the public or the Commonwealth.

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 amendments to the regulations will allow parents and legal guardians to retain the custody of the children placed in an independent foster home, increase the length of time a child may remain in an independent foster home from 90 days to 180 days, and allow placements longer than 180 days in certain cases. Additionally, numerous health and safety standards will be updated.

Estimated economic impact. The proposed amendments to the regulations apply to independent foster homes. These foster homes receive children directly from parents or legal guardians through a temporary entrustment agreement. For example, independent foster homes may receive children from parents deployed for military service overseas, or parents experiencing medical problems to the extent they can no longer care for their children. These foster homes receive children directly from parents independent of local departments of social services and licensed private child-placing agencies and operate independently. In the absence of direct services provided and monitoring by public child welfare agencies, licensing requirements help ensure that these facilities provide the necessary level of care compatible with health and safety of the children. Although not required, all of the current independent foster homes are also approved to accept children from local departments of social services and/or licensed private child-placing agencies and consequently subject to more stringent health and safety standards.

Currently, there are three licensed independent foster homes in the Commonwealth. The number of children under the care of a licensed independent foster home at a given time is approximately six. The parents needing respite care place about 22 children from time to time, but only three or four of these children reside in independent foster homes at a time. In addition to placements for respite care, there are approximately three placements for other reasons. Parents or legal guardians pay the cost of care.

The proposed amendments will allow parents and legal guardians to retain the custody of the children placed in an

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independent foster home, increase the length of time a child may remain in an independent foster home from 90 days to 180 days, and allow placements longer than 180 days in certain cases. Currently, children may be placed into an independent foster home only through an entrustment agreement, which transfers the custody of the child to the foster home and only for up to 90 days without exceptions. The proposed changes will allow placement through a "placement agreement" which allows the parents to keep the custody of the child. Additionally, parents will be able to leave the child in these foster homes for a longer period of time and in case of military deployment or illness they will be able to extend the length of placement over 180 days. These changes will provide additional options, or greater flexibility to the parents or legal guardians. Thus, parents or legal guardians are likely to benefit from these changes, as they are likely to exercise these options if they expect to benefit from them. The additional flexibility provided to parents is unlikely to hurt independent foster homes, as a mutual agreement must be reached between the two parties.

A number of proposed changes will update the minimum health and safety standards. These include deleting exemptions to some of the training requirements, adding training requirements for first aid and cardiopulmonary resuscitation, strengthening the prohibitions related to persons with traffic violations transporting children, listing poison control telephone numbers by the phone, requiring child resistant covers for electric outlets not only for preschool children but also for developmentally delayed children of a comparable maturity, requiring personnel to be able to communicate in English, establishing immunization requirements for pets, prohibiting physical restraint techniques, including the requirements for background checks for all adult household members and other adults involved in the day-to-day operations, updating the medical requirements for caregivers and household members, etc. At the aggregate, these changes have the potential to increase compliance costs through expenditures on equipment, training, background checks, and staff time and probably improve health and safety of children placed in independent foster homes. However, all of the current licensed independent foster homes are also approved to accept children from either the local departments of social services or a licensed child-placing agency and therefore may already be in compliance with some or all of the proposed changes. Thus, the potential economic effects of the proposed health and safety requirements are probably not significant.

Businesses and entities affected. The proposed regulations particularly affect the three licensed independent foster homes, potential future providers, the children in these homes, and their parents and legal guardians.

Localities particularly affected. The proposed changes are statewide.

Projected impact on employment. No significant effect on employment is expected.

Effects on the use and value of private property. The proposed regulations are not anticipated to create any 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 Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments allow parents and legal guardians to retain the custody of the children placed in an independent foster home, increase the length of time a child may remain in an independent foster home from 90 days to 180 days, and allow placements longer than 180 days in certain cases. Additionally, numerous health and safety standards are updated.

CHAPTER 141.

~~MINIMUM LICENSING STANDARDS FOR LICENSED~~ INDEPENDENT FOSTER HOMES.

22 VAC 40-141-10. Definitions.

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

"Assistant" means an individual 18 years of age or older who is selected by the independent foster parent to assist the provider in the care and supervision of the children in the home.

"Child" means any individual less than 18 years of age.

~~"Child Protective Service Central Registry" means the name index of individuals involved in child abuse and neglect investigations with a founded disposition and maintained by the Virginia Department of Social Services.~~

"Child with special needs" means a child with diagnosed physical, mental, or emotional disabilities such as, but not limited to, cerebral palsy, sensory impairment, learning disabilities, behavior disorders, chronic illnesses, a deficit in social functioning, mental retardation or emotional disturbance and who may require special monitoring or specialized programs, interventions or facilities.

"Commissioner" means the Commissioner of *the Department of Social Services*, ~~also known as the Director of the Virginia Department of Social Services~~ *his designee, or authorized representative.*

~~"Cooling device" means a mechanical device used to cool a room, such as an electric fan or air conditioner.~~

"Department" means the Virginia Department of Social Services.

~~"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner in carrying out the responsibilities and duties specified in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.~~

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, truthfulness and dependability and (ii) has a history or pattern of behavior that demonstrates that the

individual is suitable and able to care for, *guide*, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective *character and reputation* references.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision 13 of § 16.1-278.8 of the Code of Virginia.

"Infant" means any child from birth up to 16 months of age.

"Major injuries, illnesses and accidents" means injuries, illnesses or accidents ~~which~~ *that* require emergency medical care or treatment.

"Parent" means the legal parent or parents or legal guardians of the child.

"Placing agreement" means the written agreement signed by the child's parents or guardians and the independent foster home parents in which the parents or guardians authorize the child's placement in the independent foster home for a period of 180 days or fewer. The placing agreement specifies the rights and responsibilities of each party but does not transfer legal custody to the independent foster home parent. The agreement addresses acquisition of, and consent for, any medical treatment needed by the child; financial responsibility for the placement; visitation with the child's family; and if appropriate to the child's age, unauthorized absences from the home. The parents or guardians may withdraw the placing agreement at any time during the placement period.

"Provider" means independent foster parents who give 24-hour substitute family care, room and board, and services for up to eight children who reside in the provider's home as members of the household. A provider may be a husband and wife.

"Temporary entrustment agreement" means the agreement signed by the child's parents or guardians and the licensed independent foster parent in which the parents or guardians temporarily confer physical and legal custody of their child to the licensed provider for less than ~~90~~ 180 days. The temporary entrustment agreement specifies the rights and obligations of the child, the parents or guardians and the provider, includes the responsibilities of the parents for financial support, and grants authority for medical care of the child. Temporary entrustment agreements may be withdrawn by the parents or guardians at any time during the ~~90-day~~ 180-day period. Placements for longer than 90 days must be approved by the local juvenile and domestic relations court.

"Time-out" means a discipline technique in which a child is moved for a brief time away from the stimulation and reinforcement of ongoing activities and other children to allow the child to regain composure when losing self-control.

22 VAC 40-141-20. Legal authority.

The licensed independent foster parent is permitted by law to accept children for care who are entrusted to the provider by the parents or legal guardians or *whose parents have signed a placing agreement authorizing the child's temporary placement in the independent foster home.* ~~This A temporary entrustment transfers custody of the child from the parents or legal guardians to the independent foster parents. The entrustment must be approved by the juvenile and domestic relations court if the child is to remain in placement more than 90 days.~~ *A placing agreement authorizes the child's placement in the independent foster home while allowing the parents or guardians to maintain legal custody. The local juvenile and domestic relations court must approve the temporary entrustment agreement if the child is to remain in the placement for more than 90 days.*

Individuals are exempt from licensure if they only provide care to children who are born to or adopted by the individual or children of relatives or personal friends. Subdivision A 4 of § 16.1-278.2 of the Code of Virginia referenced in the definition of an independent foster home refers to the placement decisions for children by local boards of social services or a public agency designated by the community policy and management team. Subdivision 6 of § 16.1-278.4 of the Code of Virginia refers to the court transfer of legal custody from the parent to another individual or agency. Subdivision 13 of § 16.1-278.8 of the Code of Virginia refers to the court's disposition of delinquent juveniles. Individuals receiving children under these provisions are not subject to licensure *under this regulation.*

Section ~~63.1-202~~ 63.2-1734 of the Code of Virginia establishes the authority of the State Board of Social Services to promulgate regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed by § ~~63.1-496~~ 63.2-1701 of the Code of Virginia. Regulations shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. Section ~~63.1-215~~ 63.2-1712 of the Code of Virginia states that it shall be a misdemeanor to operate or engage in the activities of a child welfare agency without first obtaining a license.

PART II. GENERAL REQUIREMENTS FOR PROVIDERS.

22 VAC 40-141-30. General requirements.

A. Children placed in independent foster homes by their parents or legal guardian shall not remain in care longer than ~~90 days without the approval of the local juvenile and domestic relations court~~ 180 days.

~~If it appears that a child cannot be returned to the child's parents in less than 90 days, the provider shall petition the local juvenile and domestic relations court within 30 days of placement to request an assessment of the care and custody of the child.~~

For a child placed in the independent foster home by a temporary entrustment agreement, if it appears that the child cannot be returned to the child's parent or guardian within 90

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days of the date of placement, the provider shall petition the local juvenile and domestic relations court within 30 days of placement to request an assessment of the care and custody of the child.

Exception: A child's placement in the independent foster home may exceed 180 days for reasons of parental illness/recuperation or military deployment if that was the reason for the placement and the provider refers the child to the local department of social services and makes a request for an assessment of the care and custody of the child to determine if additional services or evaluations are necessary.

B. Providers shall be at least 21 years of age.

C. Providers shall have either a bachelor's degree in a field related to family services, child care and development, social work or education or a high school diploma or a G.E.D. and at least one year of experience providing care to children in the age range to be placed in the home. Providers who accept children with special needs shall have experience or training directly relevant to the developmental levels and special needs of the children in care.

~~Exception: Licensed and registered family day care home providers and family day care homes approved by licensed family day care systems shall be exempt from the requirements of this subsection when providing foster care to the children enrolled in the day care home.~~

D. The provider shall be responsible for the home's day-to-day operation and for meeting licensing requirements.

22 VAC 40-141-40. ~~Child abuse or neglect record Background checks.~~

A. The applicant for licensure, the provider, assistant and adult household members, *and any other adult who is involved in the day-to-day operations of the independent foster home or will be alone with, in control of, or supervising one or more children placed in the home* shall receive and provide to the licensing representative ~~the results of a search of Virginia's Child Protective Service's Central Registry and shall not have a founded child abuse or neglect record. :~~

1. The results of a criminal history record check conducted by the Virginia State Police through the Central Criminal Records Exchange and shall not have an offense as described in § 63.2-1719 of the Code of Virginia;

2. The results of a search of Virginia's Child Protective Services central registry and shall not have a founded child abuse or neglect record; and

3. A sworn disclosure statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether the person has been the subject of any founded complaint of child abuse or neglect within or outside the Commonwealth.

B. The provider shall not permit a known sex offender to reside in the home or to have contact with the children in care.

22 VAC 40-141-60. Assessment of knowledge, skills and abilities.

A. *The provider and any assistants left alone with children shall be able to speak, read, and write in English sufficient to understand and carry out the responsibilities and requirements of this chapter to ensure the care, safety, and protection of children.*

~~A-~~ B. The provider and assistant shall be knowledgeable about and physically and mentally capable of providing the necessary care for children.

~~B-~~ C. The provider and assistant shall be able to sustain positive and constructive relationships with children in care; shall relate to children with respect, courtesy, patience and affection; and shall demonstrate an understanding and respect for the families of children in care.

~~C-~~ D. The provider and assistant shall be capable of handling emergencies with dependability and good judgment.

~~D-~~ ~~The provider and assistant shall be able to communicate and follow instructions to assure care, safety and protection for children.~~

E. The provider shall have the financial income to meet the basic needs of the provider's own family as well as to meet the needs of each child in placement if the parents are unable to pay for the child's care.

F. The provider shall have knowledge, skills and abilities in parenting skills and behavior management of children in the age or special needs group of the children to be placed with the provider.

G. The provider and assistant shall respect the confidentiality of the child and his family in accordance with § ~~63.4-209~~ 63.2-104 of the Code of Virginia.

H. The provider and assistant shall be responsible, of good character and reputation and shall display behavior that demonstrates stability and maturity.

I. The provider shall demonstrate marital stability, if married.

J. The provider shall complete the required Home Study Assessment form provided by the department and submit the completed form with the initial application for licensure.

22 VAC 40-141-70. Training.

A. When such training is available *from the Department of Social Services, local departments of social services, or licensed child-placing agencies*, the provider shall complete an initial foster parent orientation and training session within the first six months of initial licensure. ~~On an annual basis, the provider shall also attend at least 20 hours of related training.~~

B. *The provider, any assistants, and any other adult expected to be alone in the home with children shall receive, prior to licensure or employment, certification in first aid and cardiopulmonary resuscitation appropriate to the age of children in care, from an approved source such as the American Red Cross, the American Heart Association, National Safety Council or an equivalent resource approved by the department.*

~~B.~~ C. The provider ~~and~~, assistant, *and any other adult expected to be alone in the home with children shall receive and maintain current certificates in first aid and cardiopulmonary resuscitation, appropriate to the age of children in care, from an approved source such as the American Red Cross, of the American Heart Association, the National Safety Council or an equivalent resource approved by the department.*

D. The provider shall attend at least 20 hours of related training each year. The provider shall maintain documentation of training attended.

22 VAC 40-141-80. Medical requirements for provider, assistant and household members.

A. Within 90 days prior to the initial application, the applicant for licensure as an independent foster home provider, each assistant and each ~~permanent adult~~ member of the household shall ~~obtain a tuberculin skin test indicating~~ *undergo an assessment for risk of tuberculosis infection and disease. The applicant shall provide documentation from the health department, a physician, or a physician's designee that each individual is "free from tuberculosis in a communicable form." Individuals needing additional testing to determine the absence of tuberculosis in a communicable form shall obtain a tuberculin skin test and:*

1. The statement shall include the type of test used, the date of the test, and the test results.
2. The statement shall be signed and dated by a physician, the physician's designee, or an official of a local health department.

B. If an individual is not able to receive a tuberculin test for health reasons, this shall be documented by a physician. The physician's statement shall also include the date when the test can be safely administered. The individual shall obtain the tuberculin test no later than 30 days after the date indicated by the physician.

C. An individual who had a positive reaction to a tuberculin skin test and whose physician certifies the absence of communicable tuberculosis shall obtain chest x-rays on an annual basis for the following two years. The statement shall document the date of the x-rays and be signed by a licensed physician, the physician's designee, or an official of a local health department.

D. Any individual who, upon examination or as a result of tests, shows indication of communicable tuberculosis or a physical condition that may jeopardize the safety of children in care shall be removed from contact with children and, where indicated, from food served to children. Contact may resume when a licensed physician certifies that the risk to children has been eliminated or substantially reduced.

E. The provider, any assistants, and any adult household members shall undergo subsequent screening or testing, as appropriate, every two years thereafter.

F. Any individual who comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms shall, within 30 days of exposure or development, receive an

evaluation to indicate the absence of tuberculosis in a communicable form.

PART III.
SERVICES AND SUPERVISION.

22 VAC 40-141-85. Temporary entrustment agreements agreement requirements.

A. A *written temporary entrustment agreement or placing agreement shall be received on every child placed directly by the child's parents or guardians in the independent foster home. Prior to entering into a temporary entrustment agreement, the provider shall consider the needs of the child and whether the home can meet those needs, the needs of any other children residing in the home, and the impact of the individual child joining the household.*

B. The temporary entrustment agreement shall be for placement of less than ~~90~~ *180* days. If the provider is aware at the time of admission that the placement will extend beyond 90 days, the provider shall petition the local juvenile and domestic relations court for approval of the entrustment agreement within 30 days of placement. If the length of placement is not known at admission, the provider shall petition the court for approval as soon as the provider is aware that the placement will be for longer than 90 days.

C. Each subsequent entrustment agreement for the same child shall be considered placement for longer than 90 days and shall receive approval by the local juvenile and domestic relations court.

D. The entrustment agreement shall not extend beyond the child's 18th birthday.

E. The parents or guardians may request the return of ~~their~~ a child at any time prior to the 90th day of placement without the court's approval. The entrustment agreement shall be considered revoked upon the parents' or guardians' request.

F. If the provider opposes the request for the child to return home or to a prior custodian, the provider shall immediately file the appropriate petition with the local juvenile and domestic relations court.

G. When petitioning the local juvenile and domestic relations court for approval of an entrustment agreement, § 16.1-277.01 of the Code of Virginia requires that the licensed independent foster home, as a child welfare agency, file a foster care plan with the court. The foster care plan shall meet the requirements established in § 16.1-281 of the Code of Virginia.

22 VAC 40-141-87. Placing agreement requirements.

A. A *written placing agreement or temporary entrustment agreement shall be received on every child placed directly by the child's parents or guardians in the independent foster home. Prior to entering into a placing agreement, the provider shall consider the needs of the child and whether the home can meet those needs, the needs of any other children residing in the home, and the impact of the individual child joining the household.*

B. A placing agreement shall:

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1. Allow the child's parents or guardians to retain legal custody of the child during the placement in the independent foster home;
2. Be for a placement of less than 180 days. If the provider, at any time, becomes aware that the placement will exceed 179 days, the provider shall contact the local department of social services and request an assessment of the child and an evaluation of services needed and to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court;
3. Include identifying information, including proof of identity of the child, the child's name, date of birth, sex and date of placement;
4. Address the acquisition of and consent for medical treatments needed by the child and include Medicaid or other insurance information;
5. Address the rights and responsibilities of each party involved;
6. Address the responsibilities of the child's parents or legal guardians for financial support; and
7. Be signed by the child's parent or legal guardian and the foster parent no later than the child's placement in the independent foster home.

C. A placing agreement shall not extend beyond the child's 18th birthday.

D. The parents or guardians may request the return of a child at any time prior to the 180th day of a placing agreement. The placing agreement shall be considered revoked upon the parents' or guardians' request.

E. Each subsequent placing agreement for the same child shall be considered an extension of the placement and whenever the child has been in the independent foster home for a total of 180 days the provider shall contact the local department of social services and request an assessment of the child and an evaluation of services needed and to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court.

22 VAC 40-141-90. Supervision of children in care.

- A. The provider is responsible at all times for the safety and supervision of children placed in the home.
- B. A responsible adult shall always be available to substitute in case of an emergency and the name, address, and telephone number of this adult, along with a signed statement of agreement to serve as a substitute, shall be documented.
- C. Children shall be supervised in a manner which ensures that the caregiver is aware of what the children are doing at all times and can promptly assist or redirect activities when necessary.
- D. In deciding how closely to supervise children, providers shall consider:

1. The ages of the children;

2. Individual differences and abilities of the children;
 3. The layout of the house and play area, including neighborhood circumstances or hazards; and
 4. Risk activities children are engaged in.
- E. Children under the age of six and children with special needs shall be within sight or sound supervision at all times.
- F. Providers shall not bathe with a child unless recommended by a physician.
- G. Providers shall ensure the safety of children at all times during diapering.

22 VAC 40-141-100. Capacity.

A. The provider shall not exceed the maximum capacity stipulated on the license.

B. The maximum number of children in an independent foster home shall be eight, including the children of the provider and ~~the assistant under age 13~~ any other children who reside in the home, with the following conditions: An exception may be granted by the licensing authority for sibling groups which may cause the home to exceed the licensed capacity.

1. The adult caretaker to child ratio shall be one to four for (i) preschool children during the regular waking hours and (ii) children with special needs, as indicated by a licensed physician or licensed clinical psychologist, during the regular waking hours ~~as indicated by a licensed physician or licensed clinical psychologist.~~

2. The capacity of a home shall also be based on the physical accommodations of the home, the abilities and experience of the provider, the needs of the children already in the home and children to be placed, and the number of assistants.

3. An adult household member shall not be considered an adult caretaker unless the individual actively participates in the care and supervision of the children.

22 VAC 40-141-110. Essentials for each child.

A. The diet for children shall be well-balanced and appropriate to the daily nutritional needs of each child. Special diets shall be provided as prescribed by a physician or dentist for individual children and established religious dietary practices for each child shall be observed.

B. Clothing, towels, wash cloths, toothbrushes, combs and hair brushes, and other personal needs shall be provided for each child on an individual basis and shall be kept clean and replaced as needed. Clothing shall be kept clean, in good repair, and appropriate for the age and size of each child.

C. Drinking water shall be available at all times unless prohibited by a physician's order.

D. Normal activities of daily living such as meals appropriate to the child's nutritional needs, time for sleep and rest appropriate to the child's age, bathing, etc., shall be opportunities for teaching and guiding behavior. To the extent that normal activities of daily living are used to teach and

guide behavior, the provider's actions shall not be extreme, unusual or abusive.

22 VAC 40-141-120. Transportation of children.

A. The provider shall have transportation available at all times in case of an emergency. Any individual who transports children shall have a valid driver's license and vehicle liability insurance.

B. Providers and any individuals who transport children shall assure that all passengers use safety belts and child restraint devices in accordance with Virginia law.

C. The provider and assistant transporting children shall not have driving violations on file with the Department of Motor Vehicles related to driving under the influence of alcohol or drugs, reckless driving, or any offense which places other occupants of the vehicle at risk within the five years prior to the application, *and thereafter as a condition of continued licensure*. A copy of the provider's and the assistant's driving record shall be provided to the licensing representative *upon application and at the time of submitting a renewal application*. *Driving violations as described in this section shall be reported to the licensing representative within 24 hours.*

D. *The provider shall not knowingly allow children to be transported by any person who has driving violations on file with the Department of Motor Vehicles related to driving under the influence of alcohol or drugs, reckless driving, or any other offense that places other occupants of the vehicle at risk within the previous five years.*

Exception: The parents or legal guardians of a child shall not be prohibited from transporting their child as a result of this requirement unless it poses an immediate danger to the health and safety of that child.

22 VAC 40-141-130. Medical care of children.

A. The provider shall have the name, address and telephone number of each child's physician easily accessible.

B. The provider shall have first aid supplies easily accessible to adults in the home, but not accessible to children *under the age of 13*.

C. First aid supplies shall include scissors, tweezers, sterile nonstick gauze pads, adhesive bandages in assorted sizes, a sealed package of alcohol wipes or antiseptic cleansers, a thermometer, a chemical cold pack if an ice pack is not available, first aid instruction manual or cards, an insect bite or sting preparation, one triangular bandage, current syrup of ipecac to be used only when instructed by the regional poison control center or child's physician, flexible roller or stretch gauze, disposable nonporous gloves, and an eye dressing or pad.

D. The provider shall receive medical history information, including immunizations received, for each child at the time of placement.

E. At the time of placement, the provider shall receive documentation of a physical examination of the child completed within 90 days before placement, or the child shall receive a physical examination within 30 days after placement. The current form required by the Virginia

Department of Health or any other form which provides the same information to report immunizations received and the results of the physical examination shall be used.

Exception: If a child's parent objects to the child receiving immunizations or a physical examination on religious grounds, the parent must submit a signed statement noting the objection on religious grounds and certifying to the best of the parent's knowledge, the status of the child's health.

F. The provider shall ensure that the child receives necessary medical care and follow-up.

G. The provider shall give prescription drugs to children in care only in accordance with an order signed by a licensed physician or authentic prescription label and shall keep all prescription and nonprescription medications ~~locked~~ *inaccessible to children under the age of 13* and stored as instructed by the physician or pharmacist.

1. The provider shall keep in the child's record daily documentation of all prescription and nonprescription medication administered to a child in care.

Exception: Providers are not required to record the amount of diaper ointment or sunscreen applied.

2. Out-of-date and unused medications shall be properly discarded or returned to the child's parent or guardian.

H. *The provider may permit self-administration of medication by a child in care if:*

1. *The child is physically and mentally capable of properly taking medication without assistance.*

2. *The provider maintains a written statement from the parent or a physician documenting the child's capacity to take medication without assistance.*

3. *The provider assures that the child's medications and any other medical supplies are not accessible to children under the age of 13.*

~~H. I.~~ *The provider shall report all major illnesses, injuries and , accidents, missing children, the death of a child, and any placement of a child outside of the foster home to the child's parent and to the licensing representative within 24 hours. If the provider is not able to contact the parent or guardian, attempted contacts shall be documented.*

~~I. J.~~ *The provider shall receive written authorization for routine and emergency medical and dental care for each child.*

22 VAC 40-141-150. Discipline of children.

A. Discipline shall be constructive in nature and emphasize positive approaches to managing the child's behavior. *The provider shall establish rules and expectations that encourage and teach desired behaviors and discourage undesired behavior.* The provider shall explain the ~~rules of conduct~~ *house rules and expectations* and the behavior management approach to each child who is old enough to understand.

B. There shall be no physical punishment, rough play or severe disciplinary action administered to the body such as, but not limited to, spanking, *striking or hitting with a part of the body or an implement, pinching, pulling or roughly handling a*

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child, shaking a child, forcing a child to assume an uncomfortable position (e.g., standing on one foot, keeping arms raised above or horizontal to the body), restraining to restrict movement through binding or tying, enclosing in a confined space, or using exercise as punishment.

C. Physical restraint shall not be used on children in care ~~unless the provider has received training from a source approved by the department in crisis intervention and physical restraint techniques.~~ "Physical restraint" means restraining a child's body movements by means of "physical crisis intervention techniques" or a therapeutic intervention utilizing adult physical contact only, as a short-term, emergency means of managing out-of-control behavior. It is not intended to mean everyday, commonly-accepted parenting practices and interventions such as holding a child to prevent falling or crossing into the path of a moving vehicle, or holding a child's hand to prevent placing it on a hot stove, etc.

D. The provider shall not make threats; make belittling remarks about any child, the child's family, the child's race, religion, or cultural background; use profanity; or make other statements that are frightening or humiliating to the child.

E. When separation or time-out is used as a discipline technique, it shall be brief and appropriate to the child's developmental level and circumstances. The child who is separated from others shall be in a safe, lighted, and well-ventilated place; shall not be confined or locked in a room or compartment; and shall be within hearing and vision of the provider or assistant at all times *if under the age of 13 or diagnosed with special needs.* Children age 13 and older shall be within hearing or vision of the provider or assistant at all times when separated from others for disciplinary reasons.

Children *under the age of 13 or those with special needs* shall not be placed in time-out for periods of time exceeding one minute for each year of age. Time-out shall not be used for children under two years of age.

F. The provider shall not subject children to cruel, severe, humiliating, or unusual actions.

G. The provider shall not delegate discipline or permit punishment of a child by another child or by an adult not known to the child.

H. The provider shall not deny a child contact or visits with his family as a method of discipline.

22 VAC 40-141-170. Abuse and neglect reporting responsibilities of providers.

The provider shall immediately report any suspected abuse and neglect of any child in care to child protective services and to the licensing representative. The provider shall comply with ~~§ 63.1-248.3~~ 63.2-1509 of the Code of Virginia.

22 VAC 40-141-180. Services to children.

A. The provider shall arrange for necessary services, as specified in the foster care service plan or individual service plan, and as recommended by a licensed physician or other professional working with the child, where applicable. *These services may include, but are not limited to:*

1. Professional evaluations and counseling;

2. Educational services and tutoring; and

3. Transportation to necessary appointments and services.

B. The provider shall enroll each school-age child in school within five days after placement when school is in session.

C. The provider shall promote the child's education by giving the child educational guidance and counseling in the child's selection of courses, establishing contact with the child's school, and working with the child's school to promote academic achievement and to resolve any problems brought to the provider's attention by the school.

D. In accordance with ~~§ 46.1-84~~ 16.1-281 of the Code of Virginia, the independent foster home, as a licensed child-welfare agency, shall prepare and submit to the local juvenile and domestic relations court a foster care service plan on every child *entrusted to the provider by an entrustment agreement* (i) within 30 days of signing the child's entrustment agreement for placements of 90 days or more or (ii) within 60 days of signing the entrustment agreement for placements for less than 90 days, unless the child is returned to the child's parents or guardians within 60 days of placement in the independent foster home. The *foster care service* plan shall include:

1. The reasons the child is placed with the independent foster home;

2. A summary of the child's situation at the time of placement in relation to the child's family. The summary shall include information about the child's health and educational status;

3. The permanency planning goal recommended for the child, including the projected length of stay in the home;

4. A description of the needs of the child and the child's family;

5. The programs, care, services, and other support that the independent foster home will offer or arrange for the child and the child's parents or guardians to meet those needs;

6. The target dates for completion of the services provided or arranged for the child and the child's family;

7. The participation, conduct, and financial support that will be sought from and the responsibilities of the child's parents or guardians;

8. The visitation or other contacts to be held between the child and the child's parents or guardians;

9. In writing and where appropriate for children age 16 and older, the programs and services which will help the child prepare for the transition from foster care to independent living; and

10. A copy of the independent foster home license.

E. For every child placed in the independent foster home by a placing agreement, the provider, with the assistance of the parents or legal guardians, shall prepare an individualized service plan at the time of admission. The written individualized service plan shall outline the services needed and those that will be provided to the child and his family and

identify the goals and objectives designed to reunite the child with his family. Copies of the child's individualized service plan shall be provided to the parents or legal guardians, to the child, if age 13 or older or upon the child's request, and a copy filed in the child's record. The individualized service plan shall describe:

1. The reasons why the child is placed in the independent foster home;
2. A summary of the child's situation at the time of placement in relation to the child's family, including a statement of the child's health and educational status;
3. A description of the child's needs;
4. The goals for the child, including the projected length of placement in the independent foster home;
5. The programs, care, services and other means of support that the independent foster home will offer or the arrangements for the child and the child's parent or guardian to provide services or supports;
6. Projected dates for completion of services provided or arranged for the child;
7. Projected level of involvement of the child's parents or guardians and visitation arrangements;
8. Where appropriate for children age 16 and older, the programs and services that will help the child prepare for independent living;

F. The individualized service plan shall be updated at least every 30 days.

~~E.~~ G. In accordance with federal and state law, the provider shall ensure that the child's health and safety are the paramount concern throughout the placement, case planning, service provision and review process.

~~F.~~ H. If consistent with the child's health and safety, the foster care plan or individualized service plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or guardians within the shortest ~~practicable~~ *feasible* time, which shall be specified in the plan.

~~G.~~ I. If the provider determines that it is not reasonably likely that the child can be returned to the child's prior family within a ~~practicable~~ *feasible* time, consistent with the best interests of the child, and in a separate section of the foster care plan or individualized service plan, the provider shall:

1. Describe the reasons for this conclusion; and
2. Determine and describe the opportunities for the court to consider placing the child with a relative or for the court to refer the child and the child's family to the local department of social services for further services and permanency planning.

~~H.~~ J. For children to be in care with the independent foster home for longer than 90 days, The provider shall submit the child's foster care plan or individualized service plan at the time of petitioning the local juvenile and domestic relations court for approval of the entrustment agreement or to assess the care and custody of the child, whichever is appropriate.

~~K.~~ K. The provider shall participate in all court hearings involving the child's entrustment, service plans, and custody child, as long as the child is placed in the independent foster home.

~~J.~~ L. The provider shall include the child whenever possible and appropriate to the child's age and development, the parents or prior guardians of the child, and professionals involved with the child in the development of the foster care service plan or individualized service plan.

~~K.~~ M. The provider shall follow the requirements of § 16.1-282 related to the review of the foster care service plan and shall petition the local juvenile and domestic relations court within five months of the court's approval of the entrustment agreement or within five months of the dispositional hearing at which the initial foster care plan was reviewed.

PART IV. STANDARDS FOR THE HOME OF THE PROVIDER.

22 VAC 40-141-190. Physical accommodations in the independent foster home.

A. The home shall be clean and have sufficient space and furnishings for each child receiving care in the home to include:

1. Space to meet the needs of the foster family in addition to that required for the foster children, including bedrooms which are not used as passageways and which have doors for privacy;
2. Space for each child to keep clothing and other personal belongings;
3. Indoor bathing and toilet facilities in good working order with a door for privacy. *At least one toilet, basin, and tub or shower shall be available for every eight persons;*
4. A separate, comfortable bed for each child and sufficient bedding to ensure cleanliness and comfort. A crib that meets current Consumer Product Safety Commission standards (16 CFR Parts 1508 and 1509) shall be provided for infants and children not developmentally ready to sleep in a bed. Exception: Two siblings of the same sex may occupy a double bed; and
5. Sleeping space on the first floor for children unable to use stairs unassisted, except children who can easily be carried.

B. All rooms used by children shall be heated to at least 68°F in winter, dry and well-ventilated. A child-safe, mechanical cooling device, e.g., an electric fan or air conditioner, shall be used when the temperature inside the room exceeds 80°F.

C. All doors and windows used for ventilation shall be screened.

D. Rooms used by children shall be well-lighted for activities and the comfort of children.

E. The home shall have a working telephone available to all household members for use in case of emergency. The telephone number shall be provided to the licensing representative, to parents and legal guardians of children

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placed in the home, and to children when they are away from the home.

F. No more than four children shall occupy one bedroom.

1. Children of the opposite sex over the age of two shall not share a bedroom.
2. Children shall not share a bed or bedroom with the provider or other adult.

G. There shall be at least three feet between each bed and sufficient space for each child to move about safely.

H. There shall be provision for isolation of sick children.

I. If the licensing representative observes conditions that indicate the need for an inspection by the local health department and makes this request of the provider, the provider shall comply *and provide a copy of the report to the department*.

J. The provider shall ensure that a smoke-free environment is provided in rooms accessible to children while children are in care.

22 VAC 40-141-200. Home safety.

A. The provider shall have a plan for seeking assistance from police, firefighters, *poison control*, and medical professionals in an emergency. The telephone numbers for each shall be posted next to each telephone.

B. The home and grounds shall be in good physical repair and free of litter, debris, peeling or chipped paint, hazardous materials, and infestations of rodents and insects and shall present no hazard to the health and safety of the children receiving care.

C. The provider shall have a written, posted emergency evacuation plan and rehearse the plan at least monthly. Within the first 48 hours of a child's placement in the home, the provider shall review the plan with each child who is old enough to understand.

D. If the provider possesses firearms, ammunition, and other weapons, the provider shall keep the firearms unloaded and locked as well as the ammunition and other weapons locked. Ammunition shall be locked in a separate location.

E. The provider shall keep cleaning supplies and other toxic substances stored away from food, *and locked and or out of the reach of children under the age of 13*.

F. When infants or children who are not developmentally ready to climb or descend stairs are in the home, the provider shall have protective barriers installed securely at each opening to stairways.

G. Swimming and wading pools shall be set up according to the manufacturer's instructions. Outdoor swimming pools shall be enclosed by safety fences and gates with child-resistant locks. Wading pools shall be emptied, stored away when not in use and filled with clean water before the next use.

H. Radiators, oil and wood burning stoves, floor furnaces, portable electric space heaters, fireplaces, and similar heating

devices used in areas accessible to children *under the age of 13* shall have protective barriers or screens.

I. All interior and exterior stairways with over three risers shall have hand rails at a height accessible to the children in the home.

J. Independent foster homes that provide care to preschool-age children *or to developmentally delayed children of comparable maturity to a preschool child* shall have protective, child-resistant covers over all electrical outlets. The covers shall not be of a size to present a swallowing or choking hazard.

K. *The provider shall comply with the requirements for state regulated care facilities relating to smoke detectors and fire extinguishers.*

L. *Infants shall be placed to sleep on a firm, tight-fitting mattress in a crib that meets current safety standards. To reduce the risk of suffocation, soft bedding of any kind shall not be used under or on top of the infant including, but not limited to, pillows, quilts, comforters, sheepskins, or stuffed toys.*

M. *Infants shall be placed on their backs when sleeping or napping unless otherwise directed by the child's physician. If an individual child's physician contraindicates placing the child in this position, the provider shall maintain a written statement, signed by the physician, in the child's record.*

N. *Playpens, play yards, and portable cribs shall not be used for sleeping.*

O. *Bunk beds or double decker beds shall have safety rails or mechanisms in place to reduce the risk of falls. Children under age 10 shall not use the upper levels of a double decker or bunk bed. Children of any age who have motor or developmental delays shall not use the upper bunk.*

P. *Pets shall be immunized for rabies and shall be treated for fleas, ticks, worms or other diseases as needed.*

Q. *Providers shall instruct children on safe procedures to follow when in close proximity to animals or when feeding animals, and ensure hand washing after handling animals or animal waste.*

PART V. RECORDKEEPING.

22 VAC 40-141-210. Record requirements.

A. The provider shall maintain a separate record with written information on each child in care. Records shall be kept for at least one year from the date of discharge. Information in the child's record shall include:

1. The entrustment agreement *or placing agreement* between the provider and parent. The ~~entrustment~~ agreement shall be signed on or before the date the child is placed in the home and shall include:

- a. Identifying information, including proof of identity, on the child including the name, date of birth, sex, and date of placement;

- b. The fees for foster care and other expenses and payment arrangements, including financial support from the parents or guardians;
- c. The child's social security number, Medicaid or other insurance carrier and number, and other information necessary to secure services for the child, including permission to receive medical *and dental* care;
- d. Arrangements for visits by parents and other family members;
- e. Rights and obligations of the child, the parents or guardians, and the independent foster home; and
- f. Signatures of the parent or guardian and the independent foster parent. A copy of the agreement shall be given to the parent or guardian;

- 2. Name, address and telephone numbers of parents and public or private agencies involved with the child, including the name of the assigned agency worker where appropriate;
- 3. The reason the child is placed in the independent foster home;
- 4. Name and telephone number of persons to be called in an emergency when the responsible person cannot be reached;
- 5. Names of persons who are authorized to call or visit the child;
- 6. Medical information pertinent to the health care of the child, including a list of all prescription and nonprescription medication the child receives;
- 7. Copies of the foster care *or individualized* service plans;
- 8. Correspondence and other documentation related to the child, including school records;
- 9. Reports of *accidents*, major injuries, illnesses and serious incidents, such as runaways, destruction of property, assaults on others and suicide threats or attempts;
- 10. The copy of the petition filed with the juvenile and domestic relations court if the child cannot return home within ~~90 days of placement~~ *the time frames designated by the entrustment or placing agreement* and copies of all related documents received from the court;
- 11. Services provided each week to the child by the provider and by other resources and services provided to the parent or guardian by the provider, if applicable, or by other resources, when known; and
- 12. Reasons the child ~~is~~ was discharged and the date of discharge from the home.

B. Within 30 days after discharge, the provider shall prepare a brief summary of the child's behavioral, educational, and medical progress while in the home, and a statement as to whether the goals of placement were accomplished. A copy of this report shall be given to the parents or legal guardians within 45 days of discharge and sent to the local juvenile and domestic relations court whenever the court has approved the

entrustment agreement and the foster care service plan *or a petition has been made to the court.*

FORMS

~~Initial Application for State License to Operate an Independent Foster Home for Children, 3/99.~~

~~Application for Renewal of State License to Operate an Independent Foster Home for Children, 3/99.~~

~~Financial Statement for Independent Foster Homes, 3/99.~~

Home Study Assessment for Independent Foster Homes, 3/99.

VA.R. Doc. No. R03-42; Filed January 7, 2004, 10:40 a.m.

Title of Regulation: **22 VAC 40-293. Locality Groupings (adding 22 VAC 40-293-10 and 22 VAC 40-293-20).**

Statutory Authority: § 63.2-217 of the Code of Virginia and Chapter 1042 of the 2003 Acts of Assembly (Paragraph F 1 of Item 353).

Public Hearing Date: N/A - Public comments may be submitted until March 26, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Mark L. Golden, TANF Program Manager, Department of Social Services, 7 North Eighth St., Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, or e-mail mark.golden@dss.virginia.gov.

Basis: Pursuant to § 63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The 2002 and 2003 Appropriation Acts, Item 353, specify that regulations must be established for changing locality groupings.

Purpose: The current standards of need were established in 1974. There was not a mechanism for localities to change locality groupings, even though the locality groupings were based on differences in locality cost of living. Over time, significant changes have occurred in the development of local economies. This regulation is necessary to allow local departments of social services to change locality groupings when there is evidence to support that need. This regulation will protect families by allowing them access to greater resources when warranted.

Substance: This regulation establishes a procedure for local departments of social services to change locality groupings. Local departments of social services must petition the State Board of Social Services, provide Department of Housing and Urban Development fair market rent data, and evidence that the request has been shared with the local governing board. If the request is to move to a locality grouping in which payments are lower, the local department must provide evidence that the locality has a disproportionate share of TANF recipients.

Issues: This regulation is advantageous to the Commonwealth, local departments of social services, and

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recipients of TANF. Currently, there is no procedure for changing locality groupings even though there may have been significant changes in the cost of living in a given locality. The result is an inequitable payment structure for TANF that cannot be rectified. This regulation establishes criteria using data that is easily obtainable and readily available. This will result in a system that is more equitable to families across the Commonwealth.

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 Virginia Board of Social Services (board) proposes to establish criteria that localities must meet to change their Temporary Assistance for Needy Families (TANF) locality grouping.

Estimated economic impact. This proposed regulation establishes criteria for local departments of social services to change TANF locality groupings. In 1974 each Virginia locality was assigned a specific locality grouping, which determines payment levels for recipients of TANF in that locality. No mechanism was established to permit localities to change their locality grouping. Since differences in cost of living for localities have changed since 1974, it may be appropriate to alter the composition of locality groupings. Pursuant to Item 353.F of the 2002 Appropriation Act, the board proposes to establish criteria which localities must meet in order to have their request for a change in locality grouping be approved.

Some localities may wish to be reclassified into a higher TANF payment grouping in order to benefit its poorer citizens. Since TANF payments are fully funded by the federal and state governments, localities will encounter no additional direct funding cost for higher TANF payments to their residents. On the other hand, higher TANF payments may encourage some poorer individuals to move into the locality. Though localities do not contribute to TANF payments, local departments of social services do administer the payments. Thus, a greater number of TANF recipients will increase a locality's administrative costs. Also, the constituents of some localities may prefer not to encourage TANF recipients to move in. Due to the potential increase in administrative costs and desires to not encourage lower-income individuals to move in, the demand for reclassification into a higher grouping may be limited. The Department of Social Services (department) has reported that there has been little interest in grouping reclassification. Due to administrative cost concerns and perhaps a desire to not be a financial magnet for lower-

income citizens, some localities may wish to be reclassified into a lower TANF payment grouping.

The board proposes that a request by a locality for a change in its locality grouping be approved if it meets specified conditions. For localities seeking to be reclassified into a locality grouping with lower TANF payment levels, one of the specified conditions is that "the data demonstrates that there is a disproportionate number of TANF recipients in the locality when compared to adjacent localities." A locality is deemed to have a disproportionate number of TANF recipients "if the proportion of TANF recipients to the general population is at least 20% higher in the petitioning locality than in the adjacent localities." Since TANF recipients make up only about 1% of Virginia's population, requiring that the percentage of a locality's population that are TANF recipients be at least 20% higher than the percentage of neighboring localities' populations that are TANF recipients is a prohibitively high criterion to meet. Thus, localities will very rarely, if ever, be permitted to move to a locality grouping with lower TANF payment levels if this proposed language is included in the regulation.

For localities seeking to be reclassified into a locality grouping with higher TANF payment levels, the board proposes to require that the fair market rent costs¹ in the petitioning locality be either 20% higher than at least one bordering locality in its locality grouping, or that fair market rent costs are the same for at least one bordering locality that is in a higher locality grouping. The proposed language does not specify whether "the same" requires exactly equal dollar figures, or if very close but not exactly equal fair market rent figures would be considered "the same." The proposed language also seems to exclude from qualifying petitioning localities that have fair market rent costs higher than at least one bordering locality that is in a higher locality grouping, even though the logical argument for their qualifying is stronger than localities that have fair market rent costs that are the same as at least one bordering locality that is in a higher locality grouping.

The department is not aware of any locality that currently wishes to reclassify its grouping. Thus, in the near term, this proposed regulation will likely have no impact. Since the proposed criteria for switching to a grouping with lower TANF payment levels are highly prohibitive, it is unlikely that localities will reclassify downward in the near or long term. Since the proposed criteria for switching to a grouping with higher TANF payment levels can be feasibly met, some localities may reclassify upward in the long term. Lower-income residents of such localities would benefit by receiving larger TANF payments. By seeking reclassification, the localities would be indicating that the benefits of the higher payments outweigh the potentially higher administrative costs.

Rather than base approval of changes in TANF payments on differences between neighboring localities, perhaps it would be more appropriate to consider just the cost of living within localities. A straightforward methodology that classifies each locality based on its cost of living, for which an appropriate proxy might be the U.S. Department of Housing and Urban

¹ The proposed regulation specifies that the most recent fair market rent data issued by the U.S. Department of Housing and Urban Development be used.

Development fair market data, could be used. Localities could be placed in one of three (or more) cost-of-living tiers, depending on where it ranks compared to other localities in the state. The TANF payment levels would be the same in each tier, as they are now within each grouping. A larger number of tiers would better tie the level of TANF payments to the local cost of living. For example, if there are only two tiers, then there will be a wide range of cost-of-living levels within each tier. If there are many tiers, then the same payment levels will only be given to localities that have similar costs of living.

Initially, these new cost-of-living tiers could be applied only to evaluate a payment tier change request from a locality. However, applying this methodology on a periodic basis to all the localities in the state and making appropriate payment adjustment within existing budget constraints may also be appropriate. This would help ensure that TANF payments are distributed in the most equitable manner possible.

Businesses and entities affected. This proposed regulation potentially affects the 76,416 TANF recipients in Virginia, as well as all Virginia localities.²

Localities particularly affected. All localities in Virginia are potentially affected by the proposed amendment.

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.

Summary:

The proposed regulation establishes criteria for local departments of social services to change Temporary Assistance for Needy Families (TANF) locality groupings. Each local area is placed in a locality grouping that determines payment levels for recipients of TANF in that locality. This regulation indicates the required data and the criteria to determine if a locality may switch to another locality grouping and change TANF payment levels.

CHAPTER 293.
LOCALITY GROUPINGS.

22 VAC 40-293-10. Definitions.

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

"Locality groupings" means the placement of a locality into either Group I, Group II, or Group III, which determines the Temporary Assistance for Needy Families (TANF) payment level for families residing in that locality.

"Standard of assistance" means the TANF payment standard that is graduated by family size.

"State board" means the State Board of Social Services.

22 VAC 40-293-20. Changing locality groupings.

A. A locality may change standard of assistance locality groupings by approval of the state board. The local board of social services shall request the change in writing to the state board of Social Services and shall provide:

1. The most recently available fair market rent data from the U.S. Department of Housing and Urban Development. Other data sources may be used upon approval of the state board. Such data shall include a comparison of shelter costs in the petitioning locality and adjacent localities;

2. Data showing the proportion of TANF recipients to the general population of the locality, in the case of a request to change to a lower locality grouping. Such data shall include a comparison of the proportion of TANF recipients in the petitioning locality and adjacent localities; and

3. In order to assure that the locality has sufficient funding to cover any increased costs that may result from a change in locality grouping in the General Relief program and to assure that the local governing body is aware of the proposed change in locality groupings, documentation that the request to change locality groupings has been reviewed by the local governing body.

B. The Department of Social Services shall prepare a fiscal impact statement prior to the next meeting of the state board. The fiscal impact statement shall include the cost of benefits, the cost of altering information systems, and associated administrative costs. If the fiscal impact statement demonstrates increased costs, the Commissioner of the Department of Social Services must certify that funds are available for increased costs.

C. If the state board approves a request to be reclassified into a locality grouping with lower standards of assistance, such reclassification shall be phased in by providing that eligibility and the amount of benefits in cases open at the time of such reclassification shall continue to be determined using the standards in effect in the former locality grouping at the time of the reclassification.

D. The state board shall approve the request if:

1. Within a locality and adjacent localities, the rent costs in the petitioning locality are either 20% higher than at least one other bordering locality and both localities are in the same locality grouping or the fair market rent costs are the same for at least one bordering locality and that locality is in a higher locality grouping. If the request is to lower the locality grouping, the data must show that rent costs are at least 20% lower than at least one other bordering locality or the fair market rent costs are the same for at least one neighboring locality and that locality is in a lower locality grouping;

2. The data demonstrates that there is a disproportionate number of TANF recipients in the locality when compared to adjacent localities, in the case of a locality requesting a

² Source: Department of Social Services

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change to a lower locality grouping. The number of TANF recipients is disproportionate if the proportion of TANF recipients to the general population is at least 20% higher in the petitioning locality than in the adjacent localities; and

3. Funds are available for increased costs.

VA.R. Doc. No. R03-203; Filed January 5, 2004, 3:10 p.m.

* * * * *

Title of Regulation: 22 VAC 40-740. Adult Protective Services (amending 22 VAC 40-740-10 through 22 VAC 40-740-60).

Statutory Authority: §§ 63.2-217 and 63.2-1605 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until March 26, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Cindy Lee, Adult Services Programs Consultant, Department of Social Services, 7 North Eighth St., Richmond, VA 23219, telephone (804) 726-7535, FAX (804) 726-7895, or e-mail cindy.lee@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia authorizes the State Board of Social Services to adopt regulations as may be necessary to carry out the purpose of Title 63.2.

Section 63.2-1605 of the Code of Virginia provides that each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the commissioner and in accordance with regulations adopted by the board, adult protective services for persons who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the person is 60 years of age or older or (ii) the person is incapacitated and has no relative or other person able, available and willing to provide guidance, supervision or other needed care.

Purpose: The amendment to this regulation is necessary to bring it into compliance with areas of the Code of Virginia that are already changed. Provisions in this regulation are essential to protect the health, safety and welfare of the elderly and adults with disabilities.

Substance: The major changes are technical in nature and not substantive, including language changes to bring the regulation into compliance with current statutes, the updating of several state agency names, and deleting outdated terminology. In addition, Code of Virginia references are updated in response to October 2002's recodification of the Social Services section of the Code of Virginia where Title 63.1 was repealed and replaced by Title 63.2.

Issues: The proposed action brings the regulation into compliance with previously promulgated changes. Recipients of services provided through this regulation, the agency and the Commonwealth benefit because vital adult protective services are provided in a consistent manner across the state. There are no disadvantages to the public or Commonwealth.

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 Virginia Board of Social Services (board) proposes to amend language in these regulations in order to reflect current nomenclature and for consistency with the Code of Virginia and other regulations.

Estimated economic impact. These regulations concern reports of abuse, neglect, or exploitation of the elderly and adults with disabilities, and the provision of protective services for such individuals. In the regulations dispositions are described as "a concise statement of how the report of adult abuse, neglect, or exploitation has been resolved." Under the current language, the disposition is to state that "the report is unfounded" if "a review of the facts *shows no reason to suspect* that abuse neglect, or exploitation occurred or that the adult is at risk of abuse, neglect, or exploitation." For consistency in language with the Child Protective Services regulations (22 VAC 40-705), the board proposes to remove "*shows no reason to suspect*" and replaces it with "*does not show a preponderance of evidence*." Though "*does not show a preponderance of evidence*" seems to be a lower hurdle to pass than "*shows no reason to suspect*," the Department of Social Services (department) has indicated that in practice there will be no change in when reports of adult abuse, neglect, or exploitation will be deemed unfounded.

The board proposes to change references to state agencies' names and legislation in order to reflect current nomenclature. For example, the "Department for Rights of Virginians with Disabilities" will be changed to the "Virginia Office for Protection and Advocacy." The board also proposes to amend some definitions for consistency with the Code of Virginia. These changes will have no impact on policy.

Businesses and entities affected. The 1.09 million persons aged 60 and over and the estimated 300,000 adults aged 18 and over and who have a disability are affected by this regulation.^{1,2}

Localities particularly affected. All localities in Virginia are potentially affected by the proposed amendment.

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

¹ Source: Department of Social Services

² Some of the 300,000 adults aged 18 and over and who have a disability will also be 60 or over. Thus, some of the 300,000 are already included in the 1.09 million persons aged 60 and over.

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments update regulations used by local departments of social services for investigating reports and protecting health, safety and welfare of the elderly and adults. The proposed changes are primarily technical in nature to make the regulation consistent with the Code of Virginia and current policy, update names of agencies, and delete obsolete terms.

PART 1.
DEFINITIONS.

22 VAC 40-740-10. Definitions.

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement.

"Adult" means any person in the Commonwealth who is abused, neglected, or exploited, or is at risk of being abused, neglected, or exploited; and is 18 years of age or older and incapacitated, or is 60 years of age and older.

"Adult protective services" means services provided or arranged by the local department of public welfare or social services which are necessary to prevent abuse, neglect, or exploitation of an adult. These services consist of the identification, receipt, and investigation of complaints and reports of adult abuse, neglect, and exploitation for incapacitated persons 18 years of age and over and persons 60 years of age and over. This service also includes the provision of social casework and group work in an attempt to stabilize the situation. If appropriate and available, adult protective services may include the provision of or arranging for home based care, transportation, sheltered employment, adult day care, meal service, legal proceedings, placement and other activities to protect the adult.

~~"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.~~

"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."

"Department" means the Virginia Department of Social Services.

"Director" means the director or his delegated representative of the department of ~~public welfare~~ or social services of the city or county in which the person resides or is found.

"Emergency" means that an adult is living in conditions which present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage. This includes acquiring a person's resources through the use of that person's mental or physical incapacity; the disposition of the incapacitated person's property by a second party to the advantage of the second party and to the detriment of the incapacitated person; misuse of funds; acquiring an advantage through threats to withhold needed support or care unless certain conditions are met; persuading an incapacitated adult to perform services including sexual acts to which the adult lacks the capacity to consent.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person and 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.

"Guardian ad litem" means an attorney appointed by the court to represent the interest of the person for whom a guardian or committee is requested. On the hearing of the petition for appointment of a guardian or committee, the guardian ad litem advocates for the person who is the subject of the hearing, and his duties are usually concluded when the case is decided.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures.

"Involuntary protective services" means those services authorized by the court for an adult who has been determined to need protective services and who has been adjudicated incapacitated and lacking the capacity to consent to receive the needed protective services.

"Lacks capacity to consent" means a preliminary judgment of a local department of social services social worker that an adult is unable to consent to receive needed services for reasons that relate to emotional or psychiatric problems, mental retardation, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary.

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The worker must make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for authorization to provide protective services on an emergency basis pursuant to § ~~63.1-55.6~~ 63.2-1609 of the Code of Virginia.

"Legally incapacitated" means that the person has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable of taking care of himself or his estate.

"Legally incompetent" means a person who has been adjudicated incompetent by a circuit court because of a mental condition which renders him incapable of taking care of his person or managing his estate.

"Legitimate interest" means that a public or private agency or the representative of such an agency has a need for ~~client~~ specific information which is maintained by a local department of social services as a result of an adult protective services report or investigation. The information is needed in order to fulfill a recognized agency function which can reasonably be expected to serve the best interest of the ~~client~~ adult who is the subject of the information. Agencies ~~who~~ that may have a legitimate interest in such information are specified in 22 VAC 40-730-50 B.

"Local ~~agency~~ *agency department*" means any local department of social services ~~welfare~~ in the Commonwealth of Virginia.

"Mandated reporters" means those persons who are required pursuant to § ~~63.1-55.3~~ 63.2-1606 of the Code of Virginia, to report to the local department of social services when such persons have reason to suspect that an adult is abused, neglected, or exploited. Persons required to make such reports include 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.

"Mental anguish" means a state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, to cause sorrow or fear, to humiliate or ridicule. There must be evidence that it is the perpetrator's activity which has caused the adult's feelings of pain or distress.

"Neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided such services as are necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. Neglect includes the failure of a caregiver, or some other responsible person, to provide for basic needs to maintain the adult's physical and mental health and well-being; and it includes the adult's neglect of self. Neglect includes:

1. The lack of clothing considered necessary to protect a person's health;

2. The lack of food necessary to prevent physical injury or to maintain life, including failure to receive appropriate food when persons have conditions requiring special diets;

3. Shelter which is not structurally safe; has rodents or other infestations which may result in serious health problems; does not have a safe and accessible water supply, heat source or sewage disposal. Adequate shelter for a person will depend on the impairments of an individual person; however, the person must be protected from the elements which would seriously endanger his health (rain, cold, heat) and result in serious illness or debilitating conditions;

4. Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of adults in his care;

5. The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical or mental injury or illness if it is not provided; and

6. An adult who is self-neglecting by not meeting his own basic needs due to mental or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care.

"Report" means an allegation by any person, to a local department of social services, that an adult is in need of protective services. The term "report" shall refer to both reports and complaints of abuse, neglect, and exploitation of adults.

"Unreasonable confinement" means the use of restraints (physical or chemical), isolation, or any other means of confinement without medical orders, when there is no emergency and for reasons other than the adult's safety or well-being, or the safety of others.

"Voluntary protective services" means those services given to an adult who, after investigation, is determined to be in need of protective services and consents to receiving the services so as to mitigate the risk of abuse, neglect, or exploitation.

PART II. POLICY.

22 VAC 40-740-20. Application.

A. The application process is designed to assure the prompt provision of needed adult protective services including services to adults who are not able to complete and sign a service application.

B. Persons who may complete and sign an application for adult protective services on behalf of an adult who needs the service:

1. The adult who will receive the services or the adult's legally appointed guardian or ~~committee~~ conservator;
2. Someone authorized by the adult; or
3. The local *agency department*.

C. Primary responsibility for the investigation when more than one local ~~agency department~~ may have jurisdiction under ~~§ 63.1-55.3~~ 63.2-1606 of the Code of Virginia, shall be assumed by the local ~~agency department~~:

1. Where the subject of the investigation resides when the place of residence is known and when the alleged abuse, neglect, or exploitation occurred in the city or county of residence;
2. Where the abuse, neglect, or exploitation is believed to have occurred when the report alleges that the incident occurred outside the city or county of residence;
3. Where the abuse, neglect, or exploitation was discovered if the incident did not occur in the city or county of residence or if the city or county of residence is unknown and the place where the abuse, neglect, or exploitation occurred is unknown;
4. Where the abuse, neglect, or exploitation was discovered if the subject of the report is a nonresident who is temporarily in the Commonwealth.

D. When an investigation extends across city or county lines, local ~~agencies departments~~ in those cities or counties shall assist with the investigation at the request of the local ~~agency department~~ with primary responsibility.

22 VAC 40-740-30. Investigation.

A. This chapter establishes a time frame for beginning the adult protective services investigation and gives priority to situations believed to be the most critical.

B. Investigations shall be initiated by the local ~~agency department~~:

1. Not later than 24 hours from the time the report was received if the situation is an emergency, as defined by ~~§ 63.1-55.2~~ 63.2-1603 of the Code of Virginia.
2. Not later than five calendar days from the time the report was received for all other reports.

22 VAC 40-740-40. Dispositions.

A. The disposition provides a concise statement of how the report of adult abuse, neglect, or exploitation has been resolved.

B. Possible dispositions.

1. The subject of the report needs protective services. This disposition shall be used when:
 - a. A review of the facts shows convincing evidence that adult abuse, neglect or exploitation has occurred or is occurring; or
 - b. There is reason to suspect that the adult is at risk of abuse, neglect, or exploitation and needs protective services in order to reduce that risk.
2. The need for protective services no longer exists. The subject of the report no longer needs protective services. A review of the facts shows ~~convincing evidence or provides reason to suspect a preponderance of evidence~~ that adult abuse, neglect, or exploitation has occurred. However, at

the time the investigation is initiated, or during the course of the investigation the person who is the subject of the report ceases to be at risk of further abuse, neglect, or exploitation.

3. The report is unfounded. A review of the facts ~~shows no reason to suspect~~ *does not show a preponderance of evidence* that abuse, neglect, or exploitation occurred or that the adult is at risk of abuse, neglect, or exploitation.

C. The investigation shall be completed and a disposition assigned by the local ~~agency department~~ within 45 days of the date the report was received. If the investigation is not completed within 45 days, the record shall document reasons.

22 VAC 40-740-50. Disclosure of Adult Protective Services Information.

A. This chapter describes the protection of confidential information including a description of when such information must be disclosed, when such disclosure of the information is at the discretion of the local ~~agency department~~, what information may be disclosed, and the procedure for disclosing the information.

B. ~~Agencies Departments~~ that have a legitimate interest in confidential information:

1. Department service staff (~~central and regional offices~~) have legitimate interest and shall have regular access to Adult Protective Services records maintained by *the local agencies department*.
2. The following agencies have statutory or investigatory authority and they have a legitimate interest in confidential information when such information is reasonably necessary for the fulfillment of their statutory or regulatory responsibilities and is consistent with the best interest of the adult who is the subject of the information:
 - a. Department of Mental Health, Mental Retardation and Substance Abuse Services, ~~Office of Human Rights~~;
 - b. ~~Department for Rights of the Disabled~~; *Virginia Office for Protection and Advocacy*;
 - c. Attorney General's Office, Medicaid Fraud Control Program;
 - d. Department for the Aging, ~~Office of the State Long Term Care Ombudsman~~;
 - e. Department of Health, ~~Division of Licensure and Certification including the Center for Quality Health Care Services and Consumer Protection~~;
 - f. Department of Medical Assistance Services;
 - g. Department of Health Professions;
 - h. Department for the ~~Visually Handicapped Blind and Vision Impaired~~; ~~and~~
 - i. Department of Social Services, *including the Division of Licensing Programs*; ~~and~~
 - j. *The Office of the State Long-Term Care Ombudsman.*

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~~2. Public/private service providing~~ 3. *Other public and private* agencies including community services boards, area agencies on aging, ~~family service agencies,~~ and local health departments ~~and others~~ may have legitimate interest in confidential information.

C. Local ~~agencies~~ *departments* may release information to the following persons when the local ~~agency~~ *department* has determined the person making the request has legitimate interest and the release of information is in the best interest of the adult:

1. Representatives of agencies requesting disclosure when the agency has legitimate interest as identified in 22 VAC 40-740-50 B 1, 2, and 3;
2. Police or other law-enforcement officials who are investigating adult abuse, neglect, or exploitation;
3. A physician who is treating an adult whom he reasonably suspects is abused, neglected, or exploited;
4. The adult's legally appointed guardian;
5. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;
6. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;
7. An attorney representing a local ~~agency~~ *department* in an adult protective services case; or
8. The Social Security Administration.

D. Local agencies are required to disclose information under the following circumstances:

1. When disclosure is ordered by a court;
2. When a person has made an adult protective services report and an investigation has determined the report to be unfounded, the person who made the report shall be notified of the finding pursuant to § ~~63.1-55.4~~ 63.2-104 of the Code of Virginia; or
3. When a request for access to information is made pursuant to the ~~Privacy Protection Act, § 2.1-382~~ *Government Data Collection and Dissemination Practices Act, § 2.2-3800* of the Code of Virginia.

E. Any or all of the following specific information may be disclosed at the discretion of the local agency to agencies or persons specified in subsection C of this section:

1. Name, address, age, race, sex of the adult who is the subject of the request for information;
2. Name, address, age, race, sex of the person who perpetrated the abuse, neglect, or exploitation;
3. Description of the incident or incidents of abuse, neglect, or exploitation;
4. Description of medical problems;
5. Disposition of the adult protective services report; or
6. The protective service needs of the adult.

F. Agencies or persons who receive confidential information pursuant to subdivisions 1 through 8 of subsection C of this section shall provide the following assurances to the local ~~agency~~ *department*:

1. The purposes for which information is requested is related to the adult protective services goal for the client;
2. The information will be used only for the purpose for which it is made available; and
3. The information will be held confidential by the ~~agency~~ *department* or individual receiving the information except to the extent that disclosure is required by law.

G. Methods of obtaining assurances. Any one of the following methods may be used to obtain assurances required in subsection F of this section:

- ~~1. The use of form 032-01-040/2;~~
- ~~2. 1. Agreements between local ~~agencies~~ *departments* and other community service providing agencies which provide blanket assurances required in subsection F of this section for all adult protective services cases; or~~
- ~~3. 2. State level agreements which provide blanket assurances required in subsection F of this section for all adult protective services cases; or.~~
- ~~4. The use of form 032-02-702.~~

H. Notification that information has been disclosed. When information has been disclosed pursuant to this chapter, notice of the disclosure shall be given to the person who is the subject of the information or to his legally appointed guardian. If the client has given permission to release the information ~~via form 032-01-040/2,~~ further notification is unnecessary.

22 VAC 40-740-60. Services provided.

A range of services must be made available to any abused, neglected, or exploited adult or to adults at risk of abuse, neglect, or exploitation to protect the adult and to prevent any future abuse, neglect, or exploitation.

1. Service planning. A service plan which is based on the investigative findings and the assessment of the ~~client's~~ *adult's* need for protective services shall be developed. The service plan is the basis for the activities that the worker, the ~~client~~ *adult*, and other support persons will undertake to provide the services necessary to protect the adult ~~client~~.
2. Opening a case to Adult Protective Services. Once a disposition of the report and an assessment of the adult's needs and strengths have been made, the ~~agency~~ *department* will assess the ~~client's~~ *adult's* service needs. A case should be opened for Adult Protective Services when:
 - a. The service needs are identified;
 - b. The disposition is that the adult needs protective services; and
 - c. The adult agrees to accept protective services or protective services are ordered by the court.

The disposition that the adult needs protective services may be based on convincing evidence that abuse, neglect, or

exploitation has occurred or ~~it may be based on reason to suspect~~ that the adult is at risk of abuse, neglect, or exploitation *without the provision of protective services*.

3. Implementation of the service plan. Implementation of the service plan is the delivery of the services needed to provide adequate protection to the ~~client~~ *adult*. The services may be delivered directly, through purchase of service, through informal support, or through referral. The continuous monitoring of the ~~client's~~ *adult's* progress and the system's response is a part of the implementation.

Local ~~agencies~~ *departments* are required to provide services beyond the investigation to the extent that federal or state matching funds are made available.

4. Provision of protective services without the consent of the adult. Protective services without the consent of the adult are provided when so ordered by the court.

FORMS

~~Confidentiality Form, 032-01-04012.~~

~~Assurances of Confidentiality, 032-02-702 (eff. 2/89).~~

VA.R. Doc. No. R03-112; Filed January 7, 2004, 10:36 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 2. AGRICULTURE

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2 VAC 5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2 VAC 5-320-10).**

Statutory Authority: § 3.1-1025 of the Code of Virginia.

Effective Date: February 26, 2004.

Agency Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 402, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail ffulgham@vdacs.state.va.us.

Summary:

The amendments (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.

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.

CHAPTER 320.

~~RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE ENDANGERED PLANT AND INSECT SPECIES ACT.~~

2 VAC 5-320-10. ~~Protection~~ Listing of endangered and threatened plant and insect species.

~~Under authority of the Endangered Plant and Insect Species Act (§§ 3.1-1020 through 3.1-1030 of the Code of Virginia), A.~~ The Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act (§§ 3.1-1020 through 3.1-1030 of the Code of Virginia).

~~B.~~ The following *plant and insect* species are hereby declared an endangered species as defined in ~~§ 3.1-1021~~ of the ~~Virginia Endangered Plant and Insect Species Act:~~

~~[1. *Arabis serotina*, shale barren rock cress.]~~

~~*Bacopa stragula*, mat forming water hyssop.~~

~~*Buckleya distichophylla*, piratebush.~~

~~*Carex polymorpha*, variable sedge.~~

~~[2. 1.] *Cardamine micranthera*, small-anthered bittercress.~~

[2. *Carex juniperorum*, juniper sedge.

3. *Corallorhiza bentleyi*, Bentley's coralroot.]

[~~3.~~ 4.] *Fimbristylis perpusilla*, Harper's fimbriatylis.

[~~4.~~ 5.] *Helenium virginicum*, Virginia sneezeweed.

[~~5.~~ 6.] *Helonias bullata*, swamp-pink.

[~~6.~~ 7.] *Ilex collina*, long-stalked holly.

[~~7.~~ 8.] *Iliamna corei*, Peter's mountain mallow.

[~~8.~~ 9.] *Isotria medeoloides*, small whorled pogonia.

[10. *Neonympha mitchellii*, Mitchell's satyr butterfly.]

[~~9.~~ 11.] *Nestronia umbellula*, nestronia.

[12. *Ptilimnium nodosum*, harperella.]

[~~10.~~ 13.] *Puto kosztarabi*, Buffalo Mountain mealybug.

[~~11.~~ 14.] *Pseudanophthalmus holsingeri*, Holsinger's cave beetle.

[~~12.~~ 15.] *Scirpus ancistrochaetus*, Northeastern bulrush.

[~~13.~~ 16.] *Sigara depressa*, Virginia Piedmont water boatman.

[~~14.~~ 17.] *Spiraea virginiana*, Virginia spiraea.

[~~15.~~ 18.] *Trifolium calcaricum*, running glade clover.

C. The following plant and insect species are hereby declared a threatened species:

1. *Aeschynomene virginica*, sensitive-joint vetch.

[2. *Amaranthus pumilus*, seabeach amaranth.

3. *Arabis serotina*, shale barren rock cress.]

[~~2.~~ 4.] *Cicindela dorsalis dorsalis*, Northeastern beach tiger beetle.

[~~3.~~ 5.] *Echinacea laevigata*, smooth coneflower.

[4. 6.] *Juncus caesariensis*, New Jersey rush.

[~~5.~~ 7.] *Lycopodiella margueritiae*, Northern prostrate clubmoss.

[~~6.~~ *Neonympha mitchellii*, Mitchell's satyr butterfly.]

[~~7.~~ 8.] *Nuphar sagittifolia*, narrow-leaved spatterdock.

[~~8.~~ 9.] *Platanthera leucophaea*, Eastern prairie fringed orchid.

[~~9.~~ 10.] *Pyrgus wyandot*, Appalachian grizzled skipper.

[~~10.~~ 11.] *Rhus michauxii*, Michaux's sumac.

[~~11.~~ 12.] *Scirpus flaccidifolius*, reclining bulrush.

VA.R. Doc. No. R00-271; Filed January 6, 2004, 11:37 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are 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 20-252. Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-50, 4 VAC 20-252-55, 4 VAC 20-252-60, 4 VAC 20-252-70, 4 VAC 20-252-90, 4 VAC 20-252-100, 4 VAC 20-252-130, 4 VAC 20-252-150, and 4 VAC 20-252-160).**

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

Effective Date: January 5, 2004.

Agency Contact: Deborah Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or e-mail dcawthon@mrc.state.va.us.

Summary:

The amendments (i) reduce the commercial striped bass harvest quota and recreational striped bass harvest quota to 1,364,154 pounds each; (ii) establish a modified slot limit of 18 inches to 28 inches for one fish of the two fish possession limit during the 120-day recreational fishing season in the Chesapeake Bay and its tributaries and tributaries of the Potomac River; (iii) establish additional harvest reporting and transfer requirements for the commercial fishery and (iv) prohibit the possession of striped bass tagged with Chesapeake Bay fishery tags on board any vessel without a permit authorizing transit from the Chesapeake area to the coastal area.

4 VAC 20-252-50. Concerning recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take or to catch striped bass with any gear other than hook and line, rod and reel, or hand line.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area where or at a time when there is no open recreational striped bass season. Striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person fishing recreationally to possess striped bass in excess of the possession limit applicable for the area and season being fished. Striped bass taken in excess of the possession limit shall be returned to the

water immediately. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the applicable personal possession limit. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. It shall be unlawful to combine possession limits when there is more than one area or season open at the same time.

E. It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.

F. It shall be unlawful for any person to sell, offer for sale, trade or barter any striped bass taken by hook and line, rod and reel, or hand line provided, however, this provision shall not apply to persons possessing a commercial hook-and-line license and a striped bass permit and meeting the other requirements of this chapter.

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

H. It shall be unlawful for the captain of any charter boat or charter vessel to take hook-and-line, rod-and-reel, or hand line fishermen for hire unless the captain has obtained a permit from the commission and is the holder of a Coast Guard charter license.

I. Charter boat captains shall report to the commission, on forms provided by the commission, all daily quantities of striped bass caught and harvested, and daily fishing hours for themselves or their customers, respectively. The written report shall be forwarded to the commission no later than 15 days following the last day of any open season. In addition, charter boat captains engaging in the Bay and Coastal Spring Trophy-size Striped Bass Recreational Fishery and the Potomac River Tributaries Spring Trophy-size Striped Bass Recreational Fishery shall provide the report required by 4 VAC 20-252-60 and 4 VAC 20-252-70, respectively. Failure to provide these reports is a violation of this chapter.

4 VAC 20-252-55. Recreational harvest quota.

The total allowable level of all recreational harvest of striped bass for all open seasons and for all legal gear shall be ~~1,701,748~~ 1,364,154 pounds of whole fish. At such time as the total recreational harvest of striped bass is projected to reach ~~1,701,748~~ 1,364,154 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for recreational purposes.

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

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

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

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

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

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

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

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

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

4 VAC 20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries spring trophy-size striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

E. This fishery, combined with the fishery defined by 4 VAC 20-252-60, shall have a target take of 30,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The

season for this fishery shall be closed when it is determined that this total target has been reached.

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

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

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

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

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

D. The maximum size limit for this fishery shall be 28 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.

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

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

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

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

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

~~D. The maximum size limit for this fishery shall correspond to the maximum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River fall striped bass recreational fishery be 28 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.~~

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

4 VAC 20-252-130. Entry limits, permits, and reports.

A. There is established a special permit for engaging in either the Chesapeake area commercial fishery for striped bass or the coastal area commercial fishery for striped bass, and it shall be unlawful for any person to engage in either commercial fishery for striped bass without first having obtained the permit from the commission and meeting the following conditions:

1. The person shall be a licensed registered commercial fisherman.

2. The person shall have reported all prior fishing activity in accordance with 4 VAC 20-610 and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation.

B. Permits for the commercial harvest of striped bass in the Chesapeake area shall be issued to any registered commercial fishermen holding striped bass quota shares issued under the provisions of 4 VAC 20-252-160, except as provided by subsection C of this section.

C. Initially, permits for the 2003 commercial harvest of striped bass in the coastal area shall be issued as described in subdivisions 1 and 2 of this subsection.

1. Permits for the coastal area striped bass commercial fishery shall be limited to any registered commercial fishermen who landed a total of at least 1,000 pounds of striped bass from the coastal area in one year or more from 1993 through 1997 and harvested striped bass from the coastal area in either 2001 or 2002 as documented by the commission's mandatory reporting database, and who choose to surrender 236 tags of his Chesapeake area striped bass harvest quota. Should the coastal area harvest quota described in 4 VAC 20-252-150 B be insufficient to provide permits for all those who qualify according to the requirements in this subdivision, permits shall be granted first on the basis of the total number of years a fisherman landed striped bass from 1993 through 1997, and secondarily on the total number of pounds landed by a fisherman from 1993 through 1997.

2. If shares of coastal area quota remain, following the initial permitting process in 2003, as described in subdivision 1 of this subsection, subsequent permits issued for the 2003 coastal area commercial striped bass fishery shall first be limited, sequentially, to those fishermen who landed the most striped bass beyond a minimum total landings amount of 1,000 pounds from the coastal area during the most number of years from 1993 through 1997 and landed striped bass from the coastal area in either 2001 or 2002 as documented by the commission's mandatory reporting database, and who choose to surrender 236 tags of their Chesapeake area striped bass harvest quota. Secondarily, permits issued for the 2003 coastal area commercial striped bass fishery shall be limited, sequentially, to those fishermen who landed the most striped bass, beyond a minimum total landings amount of 1,000 pounds, from the coastal area during the most number of years from 1993 through 1997 as documented by the commission's mandatory reporting database, and who choose to surrender 236 tags of their Chesapeake area striped bass harvest quota.

3. Permittees for the 2003 commercial harvest of striped bass in the coastal area shall receive an equal share of the coastal area quota of tags.

D. It shall be unlawful for any person to purchase striped bass taken from Virginia's tidal waters for the purpose of resale without first obtaining a permit from the commission.

E. Permits must be in the possession of the permittee while harvesting, selling or possessing striped bass. Failure to have

the appropriate permit in possession shall be a violation of this chapter.

F. All commercial harvesters of striped bass shall report to the commission in accordance with 4 VAC 20-610. *In addition to the reporting requirements of 4 VAC 20-610, all commercial harvesters of striped bass shall record and report daily striped bass tag use. Daily striped bass tag use, within any month, shall be recorded on forms provided by the commission and shall accompany the monthly catch report submitted no later than the fifth day of the following month.*

G. All buyers of striped bass taken from Virginia's tidal waters shall provide written reports of daily purchases and sales for each commercial fishing season to the commission no later than 15 days following the last day of each commercial fishing season.

H. Failure of any person permitted to harvest, buy, or sell striped bass, to submit the required written report for any fishing day shall constitute a violation of this chapter.

4 VAC 20-252-150. Commercial harvest quota; conversion to striped bass tags.

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be ~~4,704,748~~ *1,364,154* pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach ~~4,704,748~~ *1,364,154* pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be 184,853 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach 184,853 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning individual shares for commercial harvests in the Chesapeake area, as described in 4 VAC 20-252-160, the commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish based on the estimate of the average weight of striped bass harvested during the previous fishing year. One striped bass tag shall be provided for each striped bass in the total quota to arrive at the commercial harvest quota of tags.

D. For the purposes of assigning individual shares, for commercial harvests in the coastal area of Virginia as described in 4 VAC 20-252-160, the commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish based on the estimate of the average weight of striped bass harvested during the previous fishing year. One striped bass tag shall be provided for each striped bass

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in the total quota, to arrive at the commercial harvest quota of tags.

4 VAC 20-252-160. Individual transferable shares; tagging.

A. For each person permitted under the provisions of 4 VAC 20-252-130 to harvest striped bass commercially, tags shall be distributed to permitted fishermen in amounts equal to the share of the Chesapeake area and coastal area striped bass harvest quota they hold. Tags issued for Chesapeake area harvest quota shall only be used for striped bass harvests in the Chesapeake area, and tags issued for the coastal area harvest quota shall only be used for striped bass harvests in the coastal area.

B. It shall be unlawful for any person permitted under the provisions of 4 VAC 20-252-130 to harvest striped bass commercially to possess any striped bass tagged with Chesapeake area tags within the waters of the coastal area, unless such person obtains from the commissioner a permit that authorizes transit from the Chesapeake area to the coastal area, for the purposes of returning to the port of landing.

~~B.~~ C. Shares of the commercial striped bass quota of tags held by any permitted fisherman may be transferred to any other person who is a licensed registered commercial fisherman; such transfer shall allow the transferee to harvest striped bass in a quantity equal to the share transferred. Any transfer of striped bass commercial shares shall be limited by the following conditions.

1. Commercial striped bass shares shall not be transferred in any quantity less than 20 tags.
2. No licensed registered commercial fisherman shall hold shares totaling more than 2.0% of the total annual Chesapeake area commercial striped bass harvest quota of tags or more than 11% of the total annual coastal area commercial striped bass harvest quota of tags.
3. No transfer of striped bass commercial harvest quota shares shall be authorized unless such transfer is documented on a form provided by the Marine Resources Commission, notarized by a lawful Notary Public, and approved by the commissioner.

~~C.~~ D. Transfers of Chesapeake area or coastal area striped bass commercial quota shares from one person to another may be permanent or temporary. Transferred tags from the Chesapeake area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the Chesapeake area, and transferred tags from the coastal area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the coastal area. Permanent transfers of commercial quota shares shall grant to the transferee that transferred share of the quota of tags for future years, and the transferor loses that same transferred share of the quota of tags in future years. Temporary transfers of striped bass commercial harvest quota shares shall allow the transferee to harvest that transferred share of the quota of tags during the year in which the transfer is approved. Thereafter, any share of the transferred striped bass commercial quota of tags reverts back to the transferor.

~~D.~~ E. The commission will issue striped bass tags to permitted striped bass commercial fishermen prior to the start of the fishing season.

~~E.~~ F. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. The permittee shall be on board the boat or vessel when striped bass are harvested and tags are applied. Nothing in this subsection shall prevent a permitted commercial hook-and-line fisherman from using three crew members who are not registered commercial fishermen to assist in the harvest of his allotment of striped bass.

~~F.~~ G. At the place of capture, and as soon as possible after capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

~~G.~~ H. It shall be unlawful to bring to shore any commercially caught striped bass that has not been marked by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession.

~~H.~~ I. Altering or attempting to alter any tag for the purpose of reuse shall constitute a violation of this chapter.

~~I.~~ J. Any tags issued and not used shall be returned to the commission by the permittee within 15 days after the close of the commercial fishery for the year.

VA.R. Doc. No. R04-84; Filed January 5, 2004, 4:59 p.m.

Title of Regulation: **4 VAC 20-720. Pertaining to Restrictions on Oyster Harvest (amending 4 VAC 20-720-40, 4 VAC 20-720-50, 4 VAC 20-720-60, 4 VAC 20-720-80).**

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: January 1, 2004.

Agency Contact: K. V. Leonard, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2120.

Summary:

The amendment changes the season dates for the James River Hand Scrape Area for the 2003-2004 public harvest season. The James River Hand Scrape Area will be open from January 1, 2004, through February 29, 2004.

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 and James River Jail Island and Point of Shoals Clean Cull Areas: October 1, 2003, through April 30, 2004. By hand tong only.

2. Seaside of Eastern Shore: for clean cull oysters only, November 1, 2003, through January 31, 2004. By hand only.

3. The Rappahannock River Hand Scrape Area; the Rappahannock River Drumming Ground Hand Scrape Area; the Rappahannock River Temples Bay Hand Scrape Area: October 15, 2003, through January 15, 2004.

4. That 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; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (PRV6A to PRV6B; and PRV5A to PRV5C, respectively); 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); that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113; that area of the Piankatank River, west of the Route 3 bridge; and Little Wicomico River: October 15, 2003, through January 15, 2004. By hand tong only.

5. 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, excluding the Tangier Sound Hand Tong Areas: December 1, 2003, through February 29, 2004. By dredge only.

6. Deep Rock Dredge Area: March 1, 2004, through March 31, 2004.

7. Great Wicomico River Hand Scrape and James River Hand Scrape Area: February 1, 2004, through March 31, 2004. By hand scrape only.

8. *James River Hand Scrape Area: January 1, 2004, through February 29, 2004. By hand scrape only.*

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: 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; the Rappahannock River Hand Scrape Area; the Drumming Ground Hand Scrape Area; the Temples Bay 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 James River

Seed Area; the James River Jail Island and Point of Shoals Clean Cull Areas; the Seaside of Eastern Shore; the Great Wicomico River Hand Scrape Area; the James River Hand Scrape Area; and the Deep Rock Dredge Area: October 1, 2003, through September 30, 2004.

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, 2004, through September 30, 2004.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1 through October 31, 2003, and February 1, 2004, through September 30, 2004; 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.

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; the Rappahannock River Hand Scrape; the Rappahannock River Drumming Ground Hand Scrape Area; the Rappahannock River Temples Bay Hand Scrape Area; 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; and Little Wicomico River: October 1, 2003, through October 14, 2003, and January 16, 2004, through September 30, 2004.

5. 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: October 1, 2003, through November 30, 2003, and March 1, 2004, through September 30, 2004.

6. Deep Rock Dredge Area: October 1, 2003, through February 29, 2004, and April 1, 2004, through September 30, 2004.

7. Great Wicomico River Hand Scrape and James River Hand Scrape Areas: October 1, 2003, through January 31, 2004, and April 1, 2004, through September 30, 2004.

8. *James River Hand Scrape Area: October 1, 2003, through December 31, 2003, and March 1, 2004, through September 30, 2004.*

4 VAC 20-720-60. Day and time limit.

A. It shall be unlawful to take, catch or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle

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used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in subdivisions 1, and 3 through 7 8 of 4 VAC 20-720-40.

C. The Commissioner of Marine Resources hereby is authorized to issue licenses to applicants to dredge for oysters where permitted on public oyster grounds by the Code of Virginia and Marine Resources Commission regulation or order, provided the applicant is eligible under all applicable laws and regulations, and further provided that such license shall be granted only upon the condition that the boat not leave the dock until one hour before sunrise and be back at dock before sunset.

D. The Commissioner of Marine Resources hereby is authorized to issue licenses to applicants to hand scrape, as described in 4 VAC 20-720-20, for oysters where permitted on public oyster grounds by the Code of Virginia and Marine Resources Commission regulation or order, provided the applicant is eligible under all applicable laws and regulations, and further provided that such license shall be granted only upon the condition that the boat not leave the dock until one-half hour before sunrise and be back at dock before sunset.

4 VAC 20-720-80. Quotas and harvest limits.

A. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 80,000 bushels of seed oysters. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, and Clean Cull Areas there shall be an oyster harvest quota of 15,000 bushels of market oysters. It shall be unlawful for any person to harvest market oysters from the James River Seed and Clean Cull Areas after the 15,000 bushel quota has been reached.

B. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivisions 3, 4 and 7 and 8 of 4 VAC 20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by eight bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

C. 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, where harvesting is allowed by dredge, there shall be a harvest limit of 15 bushels per day, per vessel. It shall be unlawful to possess on board any vessel more than 15 bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

D. In the Deep Rock Dredge Area there shall be a harvest limit of 15 bushels per day per vessel. It shall be unlawful to possess on board any vessel or to land more than 15 bushels per day per vessel. No blue crab bycatch is allowed. It shall be

unlawful to possess on board any vessel more than 250 hard clams.

E. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

VA.R. Doc. No. R04-75; Filed December 29, 2003, 12:42 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: **4 VAC 25-10. Public Participation Guidelines (amending 4 VAC 25-10-10 through 4 VAC 25-10-80).**

Statutory Authority: §§ 2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

Effective Date: February 26, 2004.

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

Summary:

The amendments (i) expand the department's means of notification for regulatory changes to include the use of e-mail and the Internet; (ii) incorporate statutory changes to the Code of Virginia including code reference changes, amendments to the petitions for rulemaking provisions, and the new fast-track rulemaking provisions; (iii) remove redundant language that restates statutory provisions; (iv) add a provision regarding ex parte communications; and (v) clarify that the entity initiating a regulatory action, i.e., the department director, Division of Mines chief, or one of the department boards, shall finalize the adoption of the new regulations according to the appropriate acts.

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

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:23 VA.R. 3287-3291 July 28, 2003, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-293; Filed January 5, 2004, 12:25 p.m.

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Department of Mines, Minerals and Energy will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 4 VAC 25-130. Coal Surface Mining Reclamation Regulations (amending 4 VAC 25-130-700.5 and 4 VAC 25-130-800.21).

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Effective Date: February 25, 2004.

Agency Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 North Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804-692-3237, e-mail saw@mme.state.va.us.

Summary:

On May 3, 1999, the federal Office of Surface Mining (OSM) approved an amendment to the Virginia Coal Surface Mining Control and Reclamation Act that added use of a "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act (64 FR 23542).

By letter dated September 22, 2000 (Administrative Record Number VA-1008), the Virginia Department of Mines, Minerals and Energy (DMME) submitted a regulatory amendment to the OSM to change the Virginia program rules at 4 VAC 25-130-700.5 and 4 VAC 25-130-800.21 in response to the statutory amendments approved by OSM on May 3, 1999. The OSM approved this regulatory amendment on August 20, 2001.

In 4 VAC 25-130-700.5, DMME is amending the definition of "collateral bond" so that a coal mine permittee may use an irrevocable letter of credit from any bank organized or authorized to transact business in the United States as an indemnity agreement between the permittee and the Department of Mines, Minerals and Energy, Division of Mine Land Reclamation.

The amendment to 4 VAC 25-130-800.21 removes the "letter of credit" as being subject to the same conditions as a collateral bond but requires the "letter" to be subject to the following conditions:

- 1. The letter may be issued only by a bank organized or authorized to do business in the United States and must conform to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500);*
- 2. Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date; and*
- 3. The letter of credit shall be payable to the department at sight, in part or in full, upon receipt from the division of a notice of forfeiture issued in accordance with 4 VAC 25-130-800.50.*

4 VAC 25-130-700.5. Definitions.

Due to the length of 4 VAC 25-130-700.5, Definitions, only the amended definition, Collateral bond, is set out. No other changes to this section have been adopted.

"Collateral bond" means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:

- (a) The deposit of cash in one or more federally insured accounts, payable only to the division upon demand;
- (b) Negotiable bonds of the United States, the Commonwealth of Virginia, or a political subdivision thereof, endorsed to the order of, and placed in the possession of the division; the bond will only be acceptable if the issue is rated "A" or better by Moody's Investor Service, Inc., or Standard and Poor's, Inc.;
- (c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral; or
- (d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the department at sight prepared in accordance with the Uniform Customs and Practices for Documentary Credits (1993 revision) International Chamber of Commerce (Publication No. 500).

4 VAC 25-130-800.21. Collateral bonds.

(a) Collateral bonds, except for letters of credit, shall be subject to the following conditions: The division shall--

- (1) Keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this Subchapter.
- (2) Value collateral at its current market value, not at face value.
- (3) Require that certificates of deposit be made payable to or assigned to the Commonwealth of Virginia, Director-Division of Mined Land Reclamation, both in writing and upon the records of the bank issuing the certificates. The division shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates and that such certificates be automatically renewable.
- (4) Not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- (5) Require the applicant to deposit the certificates of deposit in a sufficient amount to assure that the division will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond required by this Subchapter.

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VA.R. Doc. No. R04-64; Filed December 10, 2003, 12:11 p.m.

◆ **TITLE 7. ECONOMIC DEVELOPMENT** ◆

**DEPARTMENT OF MINORITY BUSINESS
ENTERPRISE**

REGISTRAR'S NOTICE: The Department of Minority Business Enterprise is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 12 of the Code of Virginia, which exempts regulations relating to instructions for application or renewal of a license, certification, or registration required by law.

Title of Regulation: 7 VAC 10-20. Regulations to Govern the Certification of Minority Business Enterprises (amending 7 VAC 10-20-10, 7 VAC 10-20-120, and 7 VAC 10-20-300).

Statutory Authority: § 2.2-1403 of the Code of Virginia.

Effective Date: February 15, 2004.

Agency Contact: Willie W. Miles, Jr., Regulatory Coordinator, Department of Minority Business Enterprise, 202 North 9th Street, 11th Floor, Richmond, VA 23219, telephone (804) 786-8973, FAX (804) 786-9736, toll-free 1-800-223-0671, or e-mail wmiles@dmbe.state.va.us.

Summary:

The amendments change the duration of certification as a minority owned business from two years to three years.

7 VAC 10-20-10. Definitions.

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

"Administratively closed" means an application for certification or recertification that has been placed in an inactive status by the department due to:

1. Insufficient information submitted and the failure of the applicant to respond to at least two written requests for such information;
2. The applicant has voluntarily withdrawn his application; or
3. The firm is no longer in business.

"Applicant" means any licensed for-profit business entity that applies to the Department of Minority Business Enterprise for certification as a bona fide minority business enterprise.

"Business enterprise" means a legal entity which is organized in any form, other than as a joint venture, such as a sole proprietorship, partnership or corporation, to engage in lawful commercial transactions for profit.

"Certification" means a process through which a business enterprise is verified to be in fact owned and controlled by an individual or individuals of an identified minority group, and so eligible to participate in minority business programs designed to stimulate minority business development.

(6) Require the applicant to designate, with the bond submitted, the person to whom--

(i) The collateral will be endorsed and returned upon release or replacement as provided in this Subchapter; and

(ii) Any interest or dividends paid on the collateral shall be paid.

(b) Cash accounts shall be subject to the following conditions:

(1) The division may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally- insured or equivalently protected accounts made payable upon demand to the division. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with 4 VAC 25-130-800.40 or 4 VAC 25-130-801.18.

(2) Any interest paid on a cash account shall be paid to the permittee.

(3) Certificates of deposit may be substituted for a cash account with the approval of the division.

(4) The division shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States and must conform to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500);

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date; and

(3) The letter of credit shall be payable to the department at sight, in part or in full, upon receipt from the division of a notice of forfeiture issued in accordance with 4 VAC 25-130-800.50.

(d) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the division at the time collateral is offered.

DOCUMENTS INCORPORATED BY REFERENCE

Standard Methods for the Examination of Water and Wastewater, 17th Edition, 1989, American Public Health Association.

Uniform Customs and Practices for Documentary Credits, 1993 Revision (Publication No. 500), effective January 1, 1994, International Chamber of Commerce.

"Certification staff" means the staff of the Department of Minority Business Enterprise assigned to review all matters relating to applications for certification, recertification and decertification at the direction of the director of the department.

"Certified" means any applicant that has satisfied the requirements of this chapter as a minority owned business and is placed on the department's certified list for a period of ~~two~~ three years.

"Control" means the primary power to direct the management and operations of a business enterprise and:

1. "Operational control" means the applicant independently makes basic decisions pertaining to the operations of the business. This does not necessarily preclude the applicant from seeking paid assistance. An applicant must possess the knowledge to weigh all advice given and to make decisions regarding the applicant's particular industry or field. Such control includes but is not limited to the following:

- a. The dominant control over the purchase of goods, equipment, business inventory, and services needed in the day-to-day operation of the business;
- b. The dominant control of corporate accounts such as savings, checking, and other financial affairs; and
- c. A thorough knowledge of the financial structure of the business and a control of the overall financial affairs and policy of the firm.

2. "Managerial control" means the applicant makes independent and unilateral business decisions needed to guide the future and destiny of the business. Such control includes but is not limited to the following:

- a. Dominant control over management policy;
- b. Dominant control over the hiring and firing of employees; and
- c. Dominant control over the solicitation and negotiation of contracts, the offering and acceptance or rejection of bids, and the administration of major aspects of the business.

3. "Operational and managerial noncontrol" exists when any one of the following conditions applies:

- a. The minority owners are current employees of a nonminority corporation, sole proprietorship, trust, or partnership which has ownership interest in the business firm applying for certification;
- b. The principals of the applicant company are substantially the same as in a nonminority firm that has an overt or undisclosed ownership or investment in the company; or
- c. The applicant is a wholly-owned subsidiary or affiliate of a nonminority firm.

"Conversion rights" means any agreement, option, scheme or documents that will create any rights which, if exercised, would result in less than 51% minority ownership by the

minority owners of the business enterprise and less than dominant control by minority owners.

"Day" means any day except Saturday, Sunday and legal state holidays.

"Decertification" means the process by which a company loses its minority business certification.

"Department" or "DMBE" means the Department of Minority Business Enterprise.

"Director" means the Director of the Department of Minority Business Enterprise.

"Investment" means as follows in the following contexts: A substantial personal investment equal to at least 51% of combined financial and nonfinancial investments in the business by the minority owners. Proof of such substantial investment shall be established by producing evidence of financial investment in the business or investments in the form of capital, equipment, contribution of property, space, patents or copyrights. Contributions of personal or professional services alone shall not be considered a substantial investment; however, a contribution of such services shall receive consideration when given in conjunction with other tangible forms of investment.

The requirement of investment as defined above may be waived provided the department has determined that the business has operated in a financially successful manner under the actual managerial and operational control of the minority owner(s) for not less than the two preceding years. The department must also find that the personal or professional services of the minority owner(s) during such period are equivalent in value to the substantial personal investment otherwise required above, and the minority owner(s) have shared in the profits, salaries or income of the business in a ratio at least equal to the share(s) or percentage of their alleged majority ownership. Nothing in this paragraph shall be deemed a waiver of any other requirement imposed by law or these regulations as a prerequisite to certification.

"Minority" means a person who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "Asian Americans" means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Korea, Samoa, Laos, Cambodia, Taiwan, Northern Marianas, the Philippines, U.S. Territory of the Pacific, India, Pakistan, Bangladesh and Sri Lanka and who are regarded as such by the community of which these persons claim to be a part.

2. "African-Americans" means all persons having origins in Africa and who are regarded as the original or indigenous people by the community of which these persons claim to be a part.

3. "Hispanic Americans" means all persons having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who are regarded as such by the community of which these persons claim to be a part.

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4. "Native Americans" means all persons having origins in any of the original peoples of North America and who are regarded as such in the community of which these persons claim to be a part or who are recognized by a tribal organization.

5. "Eskimos and Aleuts" means all persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia and who are regarded as such in the community of which these persons claim to be a part.

6. "Members of other groups" means all other individuals found to be socially and economically disadvantaged by the United States Small Business Administration under § 8(a) of the Small Business Act (15 USC § 637(a)).

"Owned" means as follows as it relates to the following legal entities of a business enterprise:

1. In a "corporation" minority principals must own at least 51% or more of all voting stock of the corporation. Any voting agreements, voting trusts or shareholder agreements among the stockholders must not dilute the beneficial ownership, the rights or the influence of minority owners of the stock or classes of stock of the corporation.

2. In a "partnership" the minority principals must act as general partners, own at least 51% of the partnership interest, exert at least 51% control among other general partners, and must have made at least 51% of the total investment.

3. In a "sole proprietorship" the individual shall be a minority and own 100% of the business interest including assets, both tangible and intangible.

"Recertification" means the review of firms currently certified by the department to determine whether or not certification will be renewed for another ~~two~~ *three* years.

"Recertify" means to renew certification for another ~~two~~ *three* years.

"Revoked" or "decertified" means a business is no longer recognized by the department as a bona fide minority business enterprise and has been deleted from the department's certified list.

"Site visit" means a visit by a certification staff member to the site of an applicant or certified company for the purpose of clarifying or obtaining additional information.

7 VAC 10-20-120. Duration of certification.

A business certified by the department shall remain certified for a period of ~~two~~ *three* years, unless the business is decertified or is no longer in business.

7 VAC 10-20-300. Certification by another state, locality, others, or federal agency.

Current certification of a business by another state, locality, *others*, or federal agency shall be considered as evidence of an applicant's status, but shall not be conclusive evidence that the applicant has satisfied the eligibility requirements set in 7 VAC 10-20-20. The director of the department at his discretion may waive certification application requirements of

businesses certified by another state, locality, *others*, or federal agency.

NOTICE: The forms used in administering 7 VAC 10-20, Regulations to Govern the Certification of Minority Business Enterprises, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Minority Business Enterprise, 202 North 9th Street, 11th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Certification/Recertification Application (~~with instructions~~), ~~CertApp/Frm 7/19/99 (rev. 7/99)~~ *VDMBE-001 (rev. 7/2003)*.

Recertification Application, VDMBE-002 (rev. 7/2003).

Short Certification Application, VDMBE-003 (rev. 7/2003).

VA.R. Doc. No. R04-83; Filed January 7, 2004, 9:34 a.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031 A, it is required to publish all proposed and final regulations.

Title of Regulation: **13 VAC 10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13 VAC 10-180-10, 13 VAC 10-180-50, and 13 VAC 10-180-60).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: January 12, 2004.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or e-mail judson.mckellar@vhda.com.

Summary:

The amendments (i) include a definition of older central cities; (ii) revise the definition of revitalization area; (iii) require market studies for developments intended for persons age 55 and older to be submitted with the application; (iv) require a certification that the proposed development meets all applicable amenity and design requirements; (v) replace the nonprofit set-aside and local housing authority set-aside with a nonprofit pool and local housing authority pool; (vi) revise the points awarded for developments located in revitalization areas; (vii) delete points awarded for certain amenity items and award points for including new amenity items; (viii) revise the standard for which points will be awarded to developments that include units that will serve people with disabilities; (ix) add a point category for developments located near public

transportation; (x) add point categories relating to management companies, architects that are LEED certified and architects that have completed fair housing training; (xi) limit the amount of credits that may be awarded to elderly developments; (xii) limit the amount of credits that may be awarded to developments located in older central cities; (xiii) create a tax credit set-aside for developments intended to serve persons with disabilities with extremely low incomes; and (xiv) make other miscellaneous administrative clarification changes.

13 VAC 10-180-10. Definitions.

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

"Applicant" means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

"Credits" means the low-income housing tax credits as described in § 42 of the IRC.

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Low-income housing units" means those units which are defined as "low income units" under § 42 of the IRC.

"Low-income jurisdiction" means any city or county in the Commonwealth with an area median income at or below the Virginia nonmetro area median income established by the U.S. Department of Housing and Urban Development ("HUD").

"Older central cities" include the following jurisdictions: Alexandria, Arlington, Bristol, Charlottesville, Danville, Falls Church, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lynchburg, Martinsville, Newport News, Norfolk, Petersburg, Portsmouth, Radford, Richmond, Roanoke, Staunton, Waynesboro and Winchester.

"Principal" means any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development will own or participate in the ownership of the proposed development or (ii) with respect to an existing multi-family rental project has owned or participated in the ownership of such project, all as more fully described hereinbelow.

The person who is the owner of the proposed development or multi-family rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case of a partnership that is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii) in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other

officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25% or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25% or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

"Qualified application" means a written request for tax credits which is submitted on a form or forms prescribed or approved by the executive director together with all documents required by the authority for submission and meets all minimum scoring requirements.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of credits thereunder.

"Revitalization area" means any area ~~(i) designated by a municipality for implementation of either a "redevelopment plan" meeting the requirements of § 36-51 of the Code of Virginia or a "conservation plan" meeting the requirements of § 36-51.1 of the Code of Virginia;~~ (ii) documented by local government officials as a revitalization area that ~~(a) has that the governing body of any city or county may by resolution designate within such city or county if such governing body shall in such resolution make the following determinations with respect to such area: (i) either (a) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions - dilapidation, obsolescence, overcrowding, inadequate ventilation, light or sanitation, excessive land coverage, deleterious land use, or faulty or inadequate design, quality or condition or (b) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area. The area within a redevelopment project, conservation project, or rehabilitation district established by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia or any area within a qualified census tract as defined in § 42 (d)(5)(c)(ii) of the IRC shall be deemed to be~~

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~~designated as a revitalization area without adoption of the above described resolution of the city or county. Any such revitalization area must either (i) have established boundaries at least a year old at the time applications are submitted and (b) has local or state funds that have been spent in furtherance of the revitalization objectives; or (iii) that is subject to a plan using Hope VI funds from HUD. The revitalization area described in clause (ii) of this definition must be part of a plan adopted by the local government that should include discussions from the locality of the type of developments that will be encouraged, the potential sources of funding, and services to be offered in the area; or (ii) be subject to a plan using Hope VI funds from HUD. A comprehensive plan does not qualify as documentation of a revitalization area.~~

13 VAC 10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments. When scoring the applications, the executive director will award points to those applications that submit the form within the deadlines established by the executive director and subtract points from those applications that fail to submit the form by such deadlines.

~~Prior to submitting an application for reservation, any applicant proposing a development intended to serve 55 or over housing, as defined by the United States Fair Housing Act, shall submit a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by the applicant's proposed development.~~

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. ~~Any applicant proposing a development intended to [serve 55 or over housing as defined by provide housing for elderly persons as an exemption to the provisions regarding familial status under] the United States Fair Housing Act (elderly housing) shall submit a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by the applicant's proposed development with the application for reservation.~~ The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies

and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least \$7,500 per unit.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), the site control document does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any

application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the director.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a ten-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

13 VAC 10-180-60. Review and selection of applications; reservation of credits.

~~The following text for this section is effective through December 31, 2003.~~

~~The executive director may divide the amount of credits into separate pools. The division of such pools may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.~~

~~An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:~~

- ~~1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the~~

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"compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools ("nonprofit pools") of credits as he may deem

appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefor in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. ~~Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)~~

b. ~~Written evidence satisfactory to the authority (i) of approval by local authorities of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)~~

c. ~~Submission of plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit by unit work write up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write up. (20 points multiplied by the quotient calculated by dividing the percentage of completion of such plans and specifications or such work write up by 75% not to exceed 20 points.)~~

2. ~~Housing needs characteristics.~~

a. ~~Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)~~

b. ~~(1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:~~

~~"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)~~

~~(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)~~

~~(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with~~

~~current zoning or other applicable land use regulations. (0 points)~~

c. ~~Documentation from the local authorities that the proposed development is located in a Revitalization Area, or such other revitalization area created by local government authorities with established boundaries beyond the boundaries of the proposed development, or determination by the authority that the proposed development is located in a Difficult Development Area as defined by HUD or in an Enterprise Zone or Housing Revitalization Zone designated by the state (20 points) if the proposed development is in a qualified census tract within either a Revitalization Area, Enterprise Zone or Housing Revitalization Zone. (25 points)~~

d. ~~Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13 VAC 10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)~~

e. ~~Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development of the U.S. Department of Agriculture, for a below market rate loan or grant; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or tap fee waivers from the government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)~~

f. ~~Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points)~~

g. ~~Any development receiving (i) a real estate tax abatement on the increase in value of the development or (ii) new project based subsidy from HUD or Rural Development for the greater of 5 or 10% of the units of the proposed development. (10 points)~~

3. ~~Development characteristics.~~

a. ~~The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed~~

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development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Lower amount of credit request. (50 points multiplied by the percentage by which the total amount of the annual tax credits requested is less than \$1,000,000, including negative points using the percentage in which the total amount of annual credits requested is greater than \$1,000,000. Developments financed with tax exempt bonds will receive an automatic 25 points under this scoring category.)

c. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2 bedroom units have 1.5 bathrooms and 3 bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If all units have a washer and dryer. (7 points)

(c) If all units have a balcony or patio. (5 points)

(d) If all units have a washer and dryer hook up only. (3 points, no points if points awarded in subdivision (1) (b) above)

(e) If all units have a dishwasher. (2 points)

(f) If all units have a garbage disposal. (1 point)

(g) If the development has a laundry room. (1 point, no points if points awarded in subdivision (1) (b) above)

(h) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)

(i) If all units have a range hood above the stove. (1 point)

(j) If all metal windows have thermal breaks, and if insulating glass for metal or vinyl windows and sliding glass doors have a 10 year warranty against breakage of the seal from date of delivery. (1 point)

(k) If all insulation complies with Virginia Power Energy Efficient Home Requirements, with a minimum R=30 insulation for roofs. (2 points)

(l) If all refrigerators are frost free, a minimum size of 14 cubic feet, and provide separate doors for freezer and refrigerator compartments. (1 point)

(m) If all exterior doors exposed to weather are metal. (1 point)

(n) Brick exterior walls. (15 points times the percentage of exterior walls covered by brick)

(o) If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)

(p) All kitchen cabinets comply with authority minimum guidelines. (1 point)

(q) All closet doors are side hinged (no bi fold or sliding doors). (1 point)

(r) All exterior wood, including trim, fascia and rake boards are clad in aluminum. (1 point)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants as elected in subdivision 4 a of this section:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units are adaptable for the handicapped in buildings with elevators. (2 points)

(c) If all units have an emergency call system. (3 points)

(d) If all bathrooms have grab bars and slip resistant bottoms for bathtubs. (1 point)

(e) If all bathrooms have an independent or supplemental heat source. (1 point)

(f) If all corridors have a handrail on one side. (1 point)

(g) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

(3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:

(a) If all bathrooms, including ones with windows, have exhaust fans ducted out. (1 point)

(b) If all existing, single glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10 year warranty against breakage of the seal. (3 points)

(c) If all apartments have a minimum of one electric smoke detector with battery backup. (1 point)

~~(d) If all bathrooms have ground fault interrupter electrical receptacles. (1 point)~~

~~(e) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)~~

~~(f) All buildings have a minimum insulation of R=30 for attics and R=19 for crawl spaces. (3 points)~~

~~(g) All public areas, such as community rooms, laundry rooms, and rental office are accessible to persons in wheelchairs. (1 point)~~

~~(h) If replacing the roof, removing the old roof and felt. (1 point)~~

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 e of this section is 50 points.

~~d. Any proposed 50 unit or less development that meets at least three of the following criteria: (i) sets maximum rents on all units at or below 25% of the gross income of households at or below 50% of the area median income (without vouchers or rental assistance); (ii) restricts at least 20% of the units for occupancy by households with incomes at or below 40% of the area median income; (iii) requires at least 60% of the developer's fee to pay development costs; and (iv) has below market rate financial assistance from local, state or federal government. (20 points)~~

~~e. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low income persons; (ii) conform to Americans with Disabilities Act Architectural Guidelines (ADAAG) requirements as set forth in the Virginia building code as BOCA Chapter 11 (13 VAC 5-61) or any successor provisions; and (iii) are actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll in showers and roll under sinks and ranges). (50 points)~~

~~f. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to ADAAG requirements as set forth in the Virginia building code as BOCA Chapter 11 (13 VAC 5-61) or any successor provisions; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)~~

~~g. Any nonelderly development in which 4.0% of the units (i) conform to ADAAG requirements as set forth in the Virginia building code as BOCA Chapter 11 (13 VAC 5-61) or any successor provisions; and (ii) are actively~~

~~marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)~~

~~4. Tenant population characteristics.~~

~~a. Commitment by the applicant to lease low income housing units in the proposed development to either: (i) 55 or over housing as defined by the United States Fair Housing Act or (ii) physically or mentally disabled persons. Applicants committing to serve physically disabled persons must meet the requirements of the federal Americans with Disabilities Act (42 USC § 12101 et seq.). Applicants receiving points under this subdivision a may not receive points under subdivision b below. (30 points)~~

~~b. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (15 points; plus 0.75 points for each percent of the low income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points under this subdivision b)~~

~~c. Commitment by the applicant to provide relocation assistance to displaced households at such level required by the authority. (30 points times the number of certified occupied units divided by the greater of (i) the number of certified occupied units or (ii) the number of units of the proposed development)~~

~~5. Sponsor characteristics.~~

~~a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed at least three tax credit developments that contain at least three times the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)~~

~~b. Evidence that the principal or principals, as a group or individually, for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)~~

~~c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected major violation of health, safety and building codes. (minus 50 points for a period of three years after the violation has been corrected)~~

~~d. Beginning January 1, 2003, any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director determines that such principal's attempts to correct such noncompliance were prohibited by a court, local~~

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government or governmental agency, in which case, no negative points will be assessed to the applicant)

~~e. Beginning January 1, 2003, any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit. (minus 20 points for a period of three years after the development is placed in service, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority)~~

~~6. Efficient use of resources.~~

~~a. The percentage by which the total of the amount of credits per low income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)~~

~~b. The percentage by which the cost per low income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)~~

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivisions 3 c and 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

~~7. Bonus points.~~

~~a. Commitment by the applicant to impose income limits on the low income housing units throughout the extended use period (as defined in the IRC) below those required~~

~~by the IRC in order for the development to be a qualified low income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)~~

~~b. Commitment by the applicant to impose rent limits on the low income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)~~

~~c. Commitment by the applicant to maintain the low income housing units in the development as a qualified low income housing development beyond the 30 year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10 year commitment beyond the 30 year extended use period or 50 points for a 20 year commitment beyond the 30 year extended use period.)~~

~~d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15 year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for profit entity. The applicant must record such option or right of first refusal immediately after the low income housing commitment described in 13 VAC 10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)~~

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application that is assigned a total number of points less than a threshold amount of 375 points shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and shall be ranked within such pool. Those applications assigned more points shall be ranked higher than those applications assigned fewer points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development

as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director

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may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial

relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly

~~designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.~~

~~Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed in service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.~~

~~If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.~~

~~The executive director shall make a written explanation available to the general public for any allocation of housing~~

~~credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.~~

~~The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.~~

~~Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount. The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.~~

~~If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.~~

~~The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low income buildings will not do so within the time period required by the~~

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~~IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may terminate the reservation of such credits and draw on any good faith deposit. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.~~

~~The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.~~

~~Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.~~

~~In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.~~

~~The following text for this section becomes effective January 1, 2004.~~

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider

appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements

have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish a set aside of credits as he may deem appropriate to satisfy the foregoing requirement ("nonprofit set aside"). If any such nonprofit set aside is so established, the executive director may rank the applications and reserve credits to applications meeting the requirements of the nonprofit set aside before reserving credits to any other application. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit set aside is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit set aside for reservation and allocation in any subsequent round or rounds; (ii) reserve, to the extent permissible under the IRC, such unreserved credits to such other applications as the executive director shall designate in the full amount permissible hereunder; or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit set aside to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit set aside may receive a reservation or allocation of annual credits in an amount greater than \$650,000 such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any

subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

The executive director may establish a set aside of credits as he may deem appropriate to applicants either relying on the experience of a local housing authority for developer experience points described hereinbelow or using Hope VI funds from HUD in connection with the proposed development ("LHA set aside"), or both. If any such LHA set aside is so established, the executive director may rank the applications and reserve credits to applications meeting the requirements of the LHA set aside before reserving credits to any other application (except any applications needed to meet the nonprofit set aside). In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such LHA set aside is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such LHA set aside for reservation and allocation in any subsequent round or rounds; (ii) reserve such unreserved credits to such other applications as the executive director shall designate in the full amount permissible hereunder; or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit set aside. In addition, no application for credits from any LHA set aside may receive a reservation or allocation of annual credits in an amount greater than \$650,000 pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.
 - a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants

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receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of approval by local authorities of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

c. Submission of plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up. (20 points multiplied by the quotient calculated by dividing the percentage of completion of such plans and specifications or such work write-up by 75% not to exceed 20 points.)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. ~~[Proposed developments competing in any pool established specifically for community revitalization plans may receive points from one of the following categories~~

~~while competing in such pool: (1) Applications with] Documentation in a form approved by the authority from the local government officials that the proposed development is located in a revitalization area and the proposed development is an integral part of the planned revitalization. [(50 points)] (2) Applications with documentation in a form approved by the authority from local government officials that (i) the proposed development is located in a revitalization area with established boundaries (beyond the boundaries of the proposed development), (ii) local or state funds have been spent or budgeted in furtherance of the revitalization objectives, and (iii) the proposed development will further the goals of the planned revitalization. (25 points) (3) The proposed development involves either (i) substantial rehabilitation (contractor's cost of at least \$50,000 per unit) or adaptive reuse of vacant or derelict structures (15 points) or (ii) the rehabilitation of properties deemed troubled by a local government based on the physical condition of the property, documented crime/drug problems or similar factors. (10 points)~~

d. If the proposed development ~~(i) includes the rehabilitation of existing housing (add 5 points) or (ii) is located in a Difficult Development Area as defined by HUD or is in a qualified census tract within either a Revitalization Area, an Enterprise Zone or a Housing Revitalization Zone designated by the state. (add 5 points)~~

~~d. e. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13 VAC 10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)~~

~~e. f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development of the U.S. Department of Agriculture, for a below-market rate loan or grant; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)~~

f. g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points)

g. h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Lower amount of credit request. (50 points multiplied by the percentage by which the total amount of the annual tax credits requested is less than \$1,000,000, including negative points using the percentage in which the total amount of annual credits requested is greater than \$1,000,000. Developments financed with tax-exempt bonds will receive an automatic 25 points under this scoring category.)

c. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

~~(b) If all units have a washer and dryer. (7 points) a community/meeting room with a minimum of 800 square feet is provided. (5 points)~~

~~(c) If all units have a balcony or patio. (5 points)~~

~~(d) If all units have a washer and dryer hook up only. (3 points, no points if points awarded in subdivision (1)(b) above)~~

~~(e) If all units have a dishwasher. (2 points)~~

~~(f) If all units have a garbage disposal. (1 point)~~

~~(g) If the development has a laundry room. (1 point, no points if points awarded in subdivision (1)(b) above)~~

~~(h) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)~~

~~(i) If all units have a range hood above the stove. (1 point)~~

~~(j) If all metal windows have thermal breaks, and if insulating glass for metal or vinyl windows and sliding glass doors have a 10-year warranty against breakage of the seal from date of delivery. (1 point)~~

~~(k) If all insulation complies with Virginia Power Energy Efficient Home Requirements, with a minimum R=30 insulation for roofs. (2 points)~~

~~(l) If all refrigerators are frost free, a minimum size of 14 cubic feet, and provide separate doors for freezer and refrigerator compartments. (1 point)~~

~~(m) If all exterior doors exposed to weather are metal. (1 point)~~

~~(n) Brick exterior walls. (15 (c) Brick covering [50% 30%] or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)~~

~~(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)~~

~~(e) If all roofing products meet the EPA's Energy Star qualified program requirements. (5 points)~~

~~(f) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)~~

~~(g) If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a HSPF rating of 9.0 or more or (ii) air conditioning units with a SEER rating of 14.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)~~

~~[(e) (h) If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)]~~

~~(p) All kitchen cabinets comply with authority minimum guidelines. (1 point)~~

~~(q) All closet doors are side hinged (no bi-fold or sliding doors). (1 point)~~

~~(r) All exterior wood, including trim, fascia and rake boards are clad in aluminum. (1 point)~~

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants as elected in subdivision 4 a of this section:

(a) If all cooking ranges have front controls. (1 point)

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~~(b) If all units are adaptable for the handicapped in buildings with elevators. (2 points)~~

~~(c) (b) If all units have an emergency call system. (3 points)~~

~~(d) (c) If all bathrooms have grab bars and slip-resistant bottoms for bathtubs an independent or supplemental heat source. (1 point)~~

~~(e) If all bathrooms have an independent or supplemental heat source. (1 point)~~

~~(f) If all corridors have a handrail on one side. (1 point)~~

~~(g) (d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)~~

(3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:

~~(a) If all bathrooms, including ones with windows, have exhaust fans ducted out. (1 point)~~

~~(b) (a) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10-year warranty against breakage of the seal. (3 points)~~

~~(c) If all apartments have a minimum of one electric smoke detector with battery backup. (1 point)~~

~~(d) If all bathrooms have ground fault interrupter electrical receptacles. (1 point)~~

~~(e) (b) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)~~

~~(f) All buildings have a minimum insulation of R=30 for attics and R=19 for crawl spaces. (3 points)~~

~~(g) All public areas, such as community rooms, laundry rooms, and rental office are accessible to persons in wheelchairs. (1 point)~~

~~(h) If replacing the roof, removing the old roof and felt. (1 point)~~

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 [~~d~~ c] of this section is ~~50~~ 60 points.

d. Any proposed 50 unit or less development that meets at least three of the following criteria: (i) sets maximum rents on all units at or below 25% of the gross income of households at or below 50% of the area median income

(without vouchers or rental assistance); (ii) restricts at least 20% of the units for occupancy by households with incomes at or below 40% of the area median income; (iii) requires at least 60% of the developer's fee to pay development costs; and (iv) has below market rate financial assistance from local, state or federal government. (20 points)

e. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conform to ~~Americans with Disabilities Act Architectural Guidelines (ADAAG) requirements as set forth in the Virginia building code as BOCA Chapter 11 (13 VAC 5-61) or any successor provisions~~ HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll-in showers and roll-under sinks and ranges). (50 points)

f. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to ~~ADAAG requirements as set forth in the Virginia building code as BOCA Chapter 11 (13 VAC 5-61) or any successor provisions~~ HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

g. Any nonelderly development in which 4.0% of the units (i) conform to ~~ADAAG requirements as set forth in the Virginia building code as BOCA Chapter 11 (13 VAC 5-61) or any successor provisions~~ HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

[~~(h) Beginning January 1, 2005, any development located within one-half mile of a commuter rail, light rail or subway station or one-quarter mile of one or more public bus lines or other public transportation usable by development occupants. (10 points)~~]

4. Tenant population characteristics.

a. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points under this subdivision a)

b. Commitment by the applicant to provide relocation assistance to displaced households at such level required by the authority. (30 points times the number of certified

occupied units divided by the greater of (i) the number of certified occupied units or (ii) the number of units of the proposed development)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed at least three tax credit developments that contain at least three times the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected major violation of health, safety and building codes. (minus 50 points for a period of three years after the violation has been corrected)

d. Beginning January 1, 2003, any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Beginning January 1, 2003, any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus 20 points for a period of three years after the development is placed in service, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Beginning January 1, 2005, any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the extended use period of such development. (minus 25 points)

g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)

h. Evidence that the proposed development's architect has completed the Fair Housing Accessibility First

program offered by HUD or an equivalent organization and the certificate is attached with the architect's certification. (5 points)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivisions 3 c and 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage

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point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13 VAC 10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality

submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application that is assigned a total number of points less than a threshold amount of 375 points [*(300 points for developments financed with tax-exempt bonds)*] shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 15% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive

director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments.

Beginning January 1, 2005, the amount of credits available for reservation to developments in older central cities from any pool established by the executive director to serve a geographic area of the state shall be limited to an amount equal to the older central city's percentage share of households paying more than 35% of income for rent in the pool in which the older central city appears. However, notwithstanding the limitation of this paragraph, all applications with a letter of support from the chief executive officer of an older central city will be eligible for a reservation of credits. [The above limitation of credits available for elderly housing shall not include assisted living facilities licensed under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.]

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such

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unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate,

5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all

requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may terminate the reservation of such credits and draw on any good faith deposit. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to

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any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development intended to serve people with disabilities and (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director. Any such reservations made in any calendar year may be up to 3.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

VA.R. Doc. No. R04-16; Filed January 6, 2004, 10:49 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-10, 18 VAC 85-20-22, 18 VAC 85-20-30, 18 VAC 85-20-120, 18 VAC 85-20-121, 18 VAC 85-20-131, 18 VAC 85-20-140, 18 VAC 85-20-210, 18 VAC 85-20-230, 18 VAC 85-20-235, 18 VAC 85-20-236, and 18 VAC 85-20-240; repealing 18 VAC 85-20-150).**

Statutory Authority: § 54.1-2400 and Chapter 29 of Title 54.1 of the Code of Virginia.

Effective Date: February 25, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Summary:

The regulations provide educational and examination requirements for the licensure of doctors of medicine, osteopathy, podiatry and chiropractic. Provisions establish standards of professional conduct, requirements for limited or temporary licenses, and requirements for renewal or reinstatement of a license including evidence of continuing competency.

The amendments change the term osteopathy to osteopathic medicine and clarify the board policies on: payment of late fees for failure to renew a license; advertising ethics; and utilization of acupuncture as a treatment modality. Amendments 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 reactivate a license.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:6 VA.R. 958-964 December 2, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-177; Filed December 31, 2003, 11:07 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 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.

Appendices B through E referenced in the following order are not on file with the Registrar's office. However, the appendices are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday.

Title of Regulation: **20 VAC 5-10. Rules Governing Utility Customer Deposit Requirements (amending 20 VAC 5-10-20).**

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

Effective Date: December 23, 2004.

Agency Contact: Farris M. (Rusty) Maddox, Principal Financial Analyst, State Corporation Commission, Division of Economics and Finance, P.O. Box 1197, Richmond, VA

23218, telephone (804) 371-9296, FAX (804) 371-9935, or e-mail rmaddox@scc.state.va.us.

Summary:

The amendments change the prior year period used to calculate the interest rate on all customer deposits from the three-month period ending in December to the three-month period ending in November. In addition, the amendments change the calculation of the interest rate on customer deposits for nonprofit utilities from the investor-owned utility rate less a fixed rate of 2.0% (e.g., 2.0% less 2.0% = 0%) to 75% of the investor-owned utility rate (e.g., 2.0% x 0.75 = 1.5%).

Based on comments received in response to proposed amendments, the regulation is amended to change the benchmark interest rate used to calculate the consumer deposit from the annual yield on one year Treasury bills to the one year constant maturity Treasury rate as calculated by the Federal Reserve. This change is necessary since one year Treasury bills are no longer being issued. However, the Federal Reserve calculation of a one year constant maturity Treasury rate provides a reasonable substitute that is derived from the interpolation of yield curve data from Treasury securities that are issued and traded.

AT RICHMOND, DECEMBER 23, 2003

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2003-00224

Ex Parte: In the Matter Adopting a Revised Rule Governing Utility Customer Deposits

FINAL ORDER

On February 22, 1983, the State Corporation Commission ("Commission") issued its Final Order in Case No. PUE-1982-00073, revising the rate of interest that utilities must pay on customer security deposits held longer than 90 days.¹ Pursuant to that Order, the interest rate for investor-owned utilities is set annually in January at a rate equal to the average of the one-year U.S. Treasury bill rates for October, November and December of the preceding year. Non-profit utilities that are owned by their customers ("cooperatives") pay an interest rate that is two percent (2%) less than the rate paid by the investor-owned utilities.

The interest rate for calendar year 2003 was calculated to be 1.5% for investor-owned utilities. The cooperatives, as a consequence of the 2% discount, paid no interest on customer deposits.

Because the Rule has not been revisited since 1983 and because the Commission is concerned that some customers are receiving no interest on their deposits, we issued an Order Establishing Investigation and Inviting Comments on June 2,

¹ The rules adopted in the Commission's Final Order of February 22, 1983, are codified at 20 VAC 5-10-20.

2003, affording the public an opportunity to comment on the issues presented in that Order.

Comments were received which provided the individual or collective responses of: four investor-owned electric utility companies; 12 electric cooperatives and the Virginia, Maryland, & Delaware Association of Electric Cooperatives ("Association of Electric Cooperatives"); three investor-owned gas utilities, one water company, and the Virginia Telecommunications Industry Association (collectively, the "Combined Companies"); and the Division of Consumer Counsel for the Office of the Attorney General. Staff filed its Report on September 5, 2003. Responses to the Staff Report were filed on October 1, 2003, by the Association of Electric Cooperatives and the Division of Consumer Counsel.

On October 24, 2003, we issued an Order for Notice and Comment or Requests for Hearing, publishing Staff's proposed Deposit Rules and establishing the procedural schedule for considering Staff's proposed rules. Pursuant to that Order, comments to the proposed Deposit Rules were filed on December 1, 2003, by Dominion Virginia Power, the Division of Consumer Counsel, and the Combined Companies. None of the commenters requested a hearing and all of the comments supported the proposed changes to the Deposit Rules. In addition to the proposed changes that were noticed, the Division of Consumer Counsel recommended that the benchmark rate used to establish the Customer Deposit rate be amended from the yield on one-year U.S. Treasury bills to the one-year Constant Maturity Treasury rate. This change was proposed because the Treasury no longer issues one-year Treasury bills; however, the Federal Reserve interpolates yields on actively traded Treasury securities to derive the Constant Maturity Treasury rates.

As directed by the Commission's Order dated October 24, 2003, Staff filed a report on December 12, 2003. Staff's report summarized the comments received, and supported the Division of Consumer Counsel's recommendation to change the benchmark interest rate to more accurately reflect currently available market rate information.

Responses to the Staff's report were due no later than December 22, 2003. No responses were received.

NOW UPON CONSIDERATION of the comments filed herein, we find that we should adopt the rules appended to this order as Attachment A, effective upon filing with the Virginia Registrar of Regulations, revising both the method of calculating the interest rate paid by utilities on customer deposits and the benchmark used to set the interest rate. We briefly summarize the rules we adopt ("Final Rules") below.

The Final Rules change the prior year period used to calculate the interest rate on all customer deposits from the three-month period ending in December, to the three-month period ending in November. The Final Rules also change the calculation of the interest rate on customer deposits for cooperatives from the investor-owned utility rate less a fixed rate of 2.0% (e.g., 2.0% less 2.0% = 0%), to 75% of the investor-owned utility rate (e.g., 2.0% x 0.75 = 1.5%). Based on comments received, the Final Rules change the benchmark interest rate used to calculate the consumer deposit from the annual yield

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on one-year Treasury bills, to the one-year constant maturity Treasury rate as calculated by the Federal Reserve. This change is necessary since one-year Treasury bills are no longer being issued. However, the Federal Reserve calculation of a one-year constant maturity Treasury rate provides a reasonable substitute that is derived from the interpolation of yield curve data from Treasury securities that are issued and traded.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt the Rules Governing Utility Customer Deposits, appended hereto as Attachment A.

(2) A copy of this Order and the rules adopted herein shall be forwarded forthwith for publication in the Virginia Register of Regulations.

(3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: all the certificated water and sewer utilities subject to the Commission's regulation as set out in Appendix A hereto; all of the telephone companies regulated by the Commission as set out in Appendix B hereto; all of Virginia's certificated interexchange carriers as set out in Appendix C attached hereto; all of the certificated gas companies as set out in Appendix D hereto; all the certificated electric cooperatives and electric companies as set out in Appendix E hereto; F. Howard Bush, Kentucky Utilities Company, P.O. Box 32010, Louisville, Kentucky 40232; Jill C. Nadolink, Esquire, Dominion Virginia Power, Legal Services, P.O. Box 26532, Richmond, Virginia 23261; Philip J. Bray, Esquire, Allegheny Power Company, 10435 Downsville Pike, Hagerstown, Maryland 21740-1766; John A. Pirko, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Anthony Gambardella, Esquire, Woods, Rogers & Hazlegrove, P.L.C., 823 East Main Street, Suite 1200, Richmond, Virginia 23219; C. Meade Browder, Jr., Senior Assistant Attorney General, and D. M. Roussy, Jr., Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Energy Regulation, Economics and Finance, and Communications.

20 VAC 5-10-20. Rule governing utility customer deposit requirements.

Each utility may require deposits from customers to protect against uncollectible accounts. The maximum amount of any deposit shall not exceed the equivalent of the customer's estimated liability for two months usage. At the request of the commission, any public utility which bills in advance for any part of its services, yet requires a deposit as herein authorized, must justify the requirement as being reasonably necessary to protect against uncollectibles from its customers.

Each utility shall be liable for interest on deposits held longer than 90 days, to accrue from the date the deposit is made until it has been refunded, or until a reasonable effort has been

made to effect refund. All investor-owned utilities will pay interest on deposits, *at a rate established annually. The interest rate for such ~~rate being~~ deposits in a given year will be established in ~~January~~ December of ~~each~~ the preceding year to equal the average of the [~~percent annual yields of~~] one year [*Constant Maturity*] Treasury [~~bills (auction average issue date) rate~~] for *September, October, and November, and December* of the preceding year. Nonprofit utilities that are owned by their customers will pay 75% of the above described interest rate ~~less 2.0%~~. The commission's Director of Economics and Finance shall notify utilities in ~~January~~ *December* of each year of the rate prevailing for ~~that~~ *the ensuing* year. At the option of each customer making a security deposit, each utility shall annually make either direct payment to the customer of all accrued interest, or shall credit same to the customer's account.*

Customer deposits may be refunded by a utility at any time. Residential customers' deposits should not be held longer than one year and all other deposits should not be held longer than two years provided the customer has established satisfactory credit during that period.

Whenever a utility requires a deposit from any residential customer, ~~said~~ *the* customer shall be permitted to pay it in three consecutive equal monthly installments whenever the total amount of the required deposit exceeds the sum of \$40. ~~Provided, however, that~~ *However*, each utility shall have the discretion to allow payment of any deposit (more or less than \$40 total) over a longer period of time to avoid undue hardship.

VA.R. Doc. No. R04-33; Filed December 23, 2003, 2:57 p.m.

FAST-TRACK REGULATIONS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18 VAC 85-110-50 and 18 VAC 85-110-60).

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Public Hearing Date: February 10, 2004 - 9 a.m.

Public comments may be submitted until March 27, 2004.
(See Calendar of Events section for additional information)

Effective Date: April 26, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, e-mail elaine.yeatts@dhp.state.va.us.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) 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 authority to establish requirements for licensure of acupuncturists is found in § 54.1-2956.9 of the Code of Virginia.

Purpose: This regulatory change eliminates a barrier to licensure for a small number of individuals who may become licensed acupuncturists, thereby increasing access to acupuncture services in the Commonwealth. The board is aware of persons who graduated from programs that were in candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) at the time of their graduation who would like to practice acupuncture in Virginia but cannot be qualified for licensure. Since this is an emerging profession in the United States, there are new programs being started, including one in Northern Virginia. Graduates of those programs that have obtained candidacy status, most of whom have already been licensed in another state, could not be licensed in Virginia. The board proposes to address this problem while continuing to require qualifications sufficiently rigorous to protect the public health and safety.

Rationale for Using Fast-Track Process: This change has the support of the acupuncture community through the Acupuncture Society of Virginia and the Advisory Board on Acupuncture. There does not appear to be any objection to the proposal, so the board would like to expedite the process and enable the licensure of applicants who might be otherwise qualified to practice.

Substance: 18 VAC 85-110-50, Educational requirements: graduates of approved institutions or programs in the United States, is amended to allow an applicant from an acupuncture program in a school or college that has achieved candidacy status for accreditation by ACAOM to be eligible for licensure provided the program has subsequently been granted accreditation within three years of the applicant's graduation.

18 VAC 85-110-60, Requirements of foreign graduates of nonaccredited educational programs in acupuncture, is amended to clarify that it applies to nonaccredited educational programs outside the United States or Canada.

Issues: There are no disadvantages to the public relating to this amendment. The consumer of acupuncture services is adequately protected by licensure of individuals who are graduates of candidacy programs, provided their schools subsequently obtain accreditation. The quality of the educational program is likely to be high at the time a school is under scrutiny by an accrediting body. All applicants for licensure must pass the national certification examination in acupuncture.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation may allow the board to license a few additional applicants in acupuncture, and a clearly stated regulation on nonaccredited programs outside the United States should enable staff of the board to more clearly explain the rule.

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 Medicine (board) proposes to enable individuals who graduated from an acupuncture program that was at the time in accreditation-candidacy status, but within three years became fully accredited, to become licensed.

Estimated Economic Impact. Under the current regulations individuals may obtain licensure only if they have successfully completed an education program that is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or any other accrediting agency approved by the board. The board proposes to permit applicants "from an acupuncture program in a school or college that has achieved candidacy status for accreditation by ACAOM [to] be eligible for licensure provided the program has subsequently

Fast-Track Regulations

been [accredited] within three years of the applicant's graduation." In order to achieve accreditation-candidacy status, acupuncture programs must meet substantial initial standards. If a program gains full accreditation within three years of the licensure applicant's graduation, then the program will have been under scrutiny and will have met ACAOM standards while the student was being educated.¹ Also, all applicants must pass the national certification examination in acupuncture in order to gain licensure, regardless of where they obtained their education.

Given these factors, it seems reasonable to conclude that individuals who successfully finished their education at programs that were in accreditation-candidacy status at the time of their graduation, and that obtained full accreditation within three years of the student's graduation, have demonstrated substantively equivalent skills to those individuals who are already permitted to obtain licensure under the current regulations. The board is aware of persons who graduated from programs that were in candidacy status by ACAOM at the time of their graduation who would like to practice acupuncture in Virginia, but cannot be qualified for licensure due to the current regulatory language. These persons will be permitted to become licensed and practice under the proposed regulations. The Commonwealth will benefit by enabling additional competent practitioners to provide services in the state.

Businesses and Entities Affected. The proposed regulations affect consumers of acupuncture services, all licensed acupuncturists, and individuals seeking or considering licensure to provide acupuncture services in the Commonwealth. In fiscal year 2002 there were 47 licensed acupuncturists in Virginia.² The department anticipates about five new license applications each year.

Localities Particularly Affected. The proposed regulations affect all Virginia localities.

Projected Impact on Employment. The proposed amendments will permit a small number of new individuals to gain employment as acupuncturists.

Effects on the Use and Value of Private Property. The proposed amendments will enable a small number of new individuals to obtain licensure and to start offering acupuncture services. These individuals will have the opportunity to increase their (financial) net worth. Permitting additional persons to offer acupuncture services could potentially bring new competitive pressures to existing licensed acupuncturists. But given the very small number of current and anticipated licensed acupuncturists compared to the state population, most existing licensed acupuncturists will likely not be significantly affected.

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 the proposed fast-track change to regulations, 18 VAC 85-110, for acceptance of applicants from candidacy-status schools of acupuncture.

¹ Source: Department of Health Professions.

² Ibid.

Summary:

The amendments allow the board to license an applicant who graduated from an acupuncture program that had obtained candidacy status from the accrediting body and subsequently been accredited within three years of the applicant's graduation.

18 VAC 85-110-50. Educational requirements: graduates of approved institutions or programs in the United States.

A. Requirements for acupuncture education obtained prior to July 1, 1990, shall be as provided in this subsection.

1. An applicant applying for licensure to practice as an acupuncturist on the basis of successful completion of education in a school or college of acupuncture accredited by the ACAOM or other accrediting agencies approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of successful completion of an acupuncture course of study in an accredited school or college for acupuncture, providing evidence of not less than 1,000 hours of schooling in not less than a continuous 18-month period.

2. The studies shall include not less than 700 didactic hours and not less than 250 clinical hours. Additional hours may be in either didactic or clinical hours based upon the school or college curriculum.

B. Requirements for acupuncture education obtained after July 1, 1990, shall be as provided in this subsection.

An applicant applying for licensure to practice as a licensed acupuncturist on the basis of successful completion of education in a school or college for acupuncture accredited by ACAOM or any other accrediting agency approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of having a minimum of three academic years in length equivalent to 90 semester credit hours or 135 quarter credit hours.

One academic year means full-time study completed in three quarters, two semesters, or three trimesters. A full-time continuous study program shall be a concentrated educational process in acupuncture which requires individual study with assigned materials in a classroom or clinical setting.

C. Requirements for acupuncture education obtained after July 1, 1999, shall be as provided in this subsection. An applicant applying for licensure to practice as a licensed acupuncturist on the basis of successful completion of education in a school or college for acupuncture accredited by ACAOM or any other accrediting agency approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of having a minimum of 1,725 hours of entry-level acupuncture education to include at least 1,000 didactic hours and 500 clinical hours. Clinical hours may include observation, as well as internship or treatment hours; the remaining 225 hours may be earned as either didactic or clinical. Correspondence programs or courses in acupuncture are excluded and do not meet the requirements for acupuncture education.

D. An applicant from an acupuncture program in a school or college that has achieved candidacy status for accreditation by ACAOM shall be eligible for licensure provided the program has subsequently been granted accreditation within three years of the applicant's graduation.

18 VAC 85-110-60. Requirements of foreign graduates of ~~nonapproved~~ nonaccredited educational programs in acupuncture.

A. An applicant who has completed an educational course of study in a school or college *outside the United States or Canada* that is not ~~approved or~~ accredited by ACAOM or any other board-approved accrediting agency shall:

1. Submit a transcript from his educational course of study in acupuncture to a credential evaluation service approved by the board to determine equivalency in education and training to that required in 18 VAC 85-110-50.
2. Meet the examination requirements as prescribed in 18 VAC 85-110-80 and 18 VAC 85-110-90.

B. All documents submitted to the board which are not in English must be translated into English and certified by the embassy of the issuing government.

VA.R. Doc. No. R04-79; Filed December 31, 2003, 11:08 a.m.

EMERGENCY REGULATIONS

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: 12 VAC 30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12 VAC 30-10-650).

12 VAC 30-130. Amount, Duration, and Scope of Selected Services (amending 12 VAC 30-130-290 through 12 VAC 30-130-340 and 12 VAC 30-130-400; adding 12 VAC 30-130-335).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: January 4, 2004, through January 3, 2005.

Agency Contact: Javier Menendez, R.Ph., Division of Health Care Services, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-2196, FAX (804) 786-1680.

Preamble:

Section 2.2-4011 A of the Administrative Process Act states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at § 2.2-4011 A (i) of the Code of Virginia as discussed below.

DMAS' voluntary drug utilization review program, implemented in 1993, focused on educational and advisory interventions with prescribing physicians and dispensing pharmacists but has not been as effective as is necessary. Such programs are intended to protect Medicaid recipients from adverse drug reactions, overutilization and underutilization of drug therapies, situations of therapeutic duplication (which can seriously endanger life and health depending on the medications' side effects), drug-disease contraindications, drug interactions, drug allergy interactions, and incorrect drug dosage or duration. The health and safety of Medicaid recipients is being endangered because the previously implemented interventions have not deterred or stopped these situations. To enable DMAS to better respond to this unmet need, the agency must have the authority to modify its claims processing and provider requirements.

The Medicaid Prospective Drug Utilization Review (ProDUR) system was designed to identify potential drug conflicts or contraindications, at the time that drugs are dispensed to recipients, so that appropriate modification of the drug therapy could be performed before recipients' health and safety were endangered. This system functions in conjunction with the point-of-sale (POS) program (a

computerized claims processing mechanism available to pharmacists) as a pharmacy claim is electronically reviewed for patient eligibility and claims adjudication. The purpose of this action is to modify the ProDUR system to enable DMAS to reject claims for drugs that conflict with or are contraindicated by criteria established by the DUR board until reviews of recipients' drug therapies are performed by prescribers.

Substance: The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) tied a state's claiming of federal financial participation (FFP) to its implementation of drug use review (DUR) program pursuant to § 1927 of the Social Security Act. DMAS complied with this federal mandate with the implementation of its prospective review for noninstitutionalized recipients, and retrospective review for nursing facility residents, drug utilization review program. DMAS' DUR program met all federal requirements and therefore received federal approval in 1993.

At the outset of the DUR program, DMAS focused on the development of physician and pharmacist educational interventions and programs pursuant to federal law. Prospective DUR (ProDUR), that is review of utilization prior to the dispensing of the prescription medicine, recognizes and utilizes the dispensing pharmacist's ability to maximize therapeutic outcomes. This is done by requiring the dispensing pharmacist to review each patient's drug therapy profile before each prescription is filled. During the review of drug therapy profiles, pharmacists are responsible for screening for potential drug therapy problems, using their knowledge as trained health care professionals and supported by computer-assisted data bases of clinical manuals approved by the Commonwealth's DUR Board.

The 1990 federal law also required the states to create professional boards that would conduct that state Medicaid program's drug utilization review activities, such as developing therapeutic criteria and educational intervention programs. Educational interventions, primarily through the use of electronic reminder messages, were expected to result in a reduction of situations of drug-to-drug interactions, overutilization and underutilization, incorrect drug dosages and duration of therapies, therapeutic duplication, adverse drug reactions, drug allergy interactions, and drug-disease contraindications, to name a few.

However, in order for this prospective drug utilization review process to be as effective as envisioned by Congress in 1990, the dispensing pharmacist should have access to the recipient's complete drug profile. For this to occur without further programmatic changes, the Medicaid recipient would have to secure all pharmacy services from only one pharmacy. This is not typically the case, however, since recipients tend to use multiple pharmacies depending on various factors, such as their immediate medical needs, their transportation capabilities, and other life circumstances. In this situation, DMAS (in its claims history and processing systems) is the sole location for recipients' complete drug profiles.

To date, the expected reductions envisioned by the 1990 DUR mandates have not been observed in DMAS' covered

pharmacy services. Two of the areas of concern are situations when recipients obtain multiple prescriptions that are therapeutically duplicative of each other and prescriptions that are refilled within less than 30 days. The first example is referred to as 'therapeutic duplication' while the second is referred to as "early refill." DMAS has observed in these two instances, that dispensing pharmacists appear to be frequently using available override and intervention codes, with the limited clinical information available to them, in order to process their claims.

12 VAC 30-10-650. Drug Utilization Review Program.

A. 1. The Medicaid agency meets the requirements of Section 1927(g) of the Act for a drug use review (DUR) program for outpatient drug claims.

2. The DUR program assures that prescriptions for outpatient drugs are:

- Appropriate
- Medically necessary
- Are not likely to result in adverse medical results

B. The DUR program is designed to educate physicians and pharmacists to identify and to reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients or associated with specific drugs as well as:

- Potential and actual adverse drug reactions
- Therapeutic appropriateness
- Overutilization and underutilization
- Appropriate use of generic products
- Therapeutic duplication
- Drug disease contraindications
- Drug-drug interactions
- Incorrect drug dosage or duration of drug treatment
- Drug allergy interactions
- Clinical abuse/misuse

C. The DUR program shall assess data use against predetermined standards whose source materials for their development are consistent with peer-reviewed medical literature which has been critically reviewed by unbiased independent experts and the following compendia:

American Hospital Formulary Service Drug Information (~~1995~~ 2003, as amended)

United States Pharmacopeia-Drug Information (~~1995~~ 2003, as amended)

~~American Medical Association Drug Evaluations (1993, as amended)~~

MICROMEDICS (as updated monthly)

Facts and Comparisons (as updated monthly)

Drug Information Handbook (2003, 2004 as amended)

D. DUR is not required for drugs dispensed to residents of nursing facilities that are in compliance with drug regimen review procedures set forth in 42 CFR 483.60. The State has nevertheless chosen to include nursing home drugs in retrospective DUR.

E. 1. The DUR program includes prospective review of drug therapy at the point of sale or point of distribution before each prescription is filled or delivered to the Medicaid recipient.

2. Prospective DUR includes screening each prescription filled or delivered to an individual receiving benefits for potential drug therapy problems due to:

- Therapeutic duplication
- Drug disease contraindications
- Drug-drug interactions
- Drug-interactions with non-prescription or over-the-counter drugs
- Incorrect dosage or duration of drug treatment
- Drug allergy interactions
- Clinical abuse/misuse

3. Prospective DUR includes counseling for Medicaid recipients based on standards established by State law and maintenance of patient profiles.

4. *Prospective DUR may also include electronic messages as well as rejection of claims at point-of-sale pending appropriate designated interventions by the dispensing pharmacist or prescribing physician.*

F. 1. The DUR program includes retrospective DUR through its mechanized drug claims processing and information retrieval system or otherwise which undertakes ongoing periodic examination of claims data and other records to identify:

- Patterns of fraud and abuse
- Gross overuse
- Inappropriate or medically unnecessary care among physicians, pharmacists, Medicaid recipients, or associated with specific drugs or groups of drugs.

2. The DUR program assesses data on drug use against explicit predetermined standards including but not limited to monitoring for:

- Therapeutic appropriateness
- Overutilization and underutilization
- Appropriate use of generic products
- Therapeutic duplication
- Drug disease contraindications
- Drug-drug interactions
- Incorrect dosage/duration of drug treatment
- Clinical abuse/misuse

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3. The DUR program through its State DUR Board, using data provided by the Board, provides for active and ongoing educational outreach programs to educate practitioners *and pharmacists* on common drug therapy problems to improve prescribing and dispensing practices.

4. *In situations of conflict with these criteria, DMAS, pursuant to the DUR Board's criteria and requirements, shall reject or deny presented claims and require the dispensing pharmacist to intervene as specified through electronic messages in the point-of-sale system before the claim will be approved for payment.*

G. 1. The DUR program has established a State DUR Board directly.

2. The DUR Board membership includes health professionals (one-third licensed actively practicing pharmacists and one-third but no more than 51 percent licensed and actively practicing physicians) with knowledge and experience in one or more of the following:

- Clinically appropriate prescribing of covered outpatient drugs.
- Clinically appropriate dispensing and monitoring of covered outpatient drugs.
- Drug use review, evaluation and intervention.
- Medical quality assurance.

3. The activities of the DUR Board include:

- *Prospective DUR*
- *Retrospective DUR*
- Application of Standards as defined in § 1927(g)(2)(C), and
- Ongoing interventions for physicians and pharmacists targeted toward therapy problems or individuals identified in the course of retrospective DUR

4. The interventions include in appropriate instances:

- Information dissemination
- Written, oral, and electronic reminders
- Face-to-Face *and telephonic* discussions
- Intensified monitoring/review of prescribers/ dispensers
- *Rejected or denied claims, as appropriate, to prevent the violation of the DUR Board's predetermined criteria.*

H. The State assures that it will prepare and submit an annual report to the Secretary, which incorporates a report from the State DUR Board, and that the State will adhere to the plans, steps, procedures as described in the report.

The Medicaid agency ensures that predetermined criteria and standards have been recommended by the DUR Board and approved by ~~the~~ *either BMAS or the director, acting on behalf of the BMAS, pursuant to Virginia Code § 32.1-324* and that they are based upon documentary evidence of the DUR Board. The activities of the DUR Board and the Medicaid fraud control programs are and shall be maintained as

separate. The DUR Board shall refer suspected cases of fraud or abuse to the appropriate fraud and abuse control unit with the Medicaid agency.

I. 1. The State establishes, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system to perform on-line:

- Real time eligibility verification
- Claims data capture
- Adjudication of claims. *Such adjudication may include the rejection or denial of claims found to be in conflict with DUR criteria. Should such rejection or denial occur during the adjudication process, the dispensing pharmacist shall have the opportunity to resolve the conflict and resubmit the claim for readjudication.*

- Assistance to pharmacists, etc., applying for and receiving payment.

2. Prospective DUR is performed using an electronic point of sale drug claims processing system.

J. *Certain* hospitals which dispense covered outpatient drugs are exempted *pursuant to federal law* from the drug utilization review requirements of this section when facilities use drug formulary systems and bill the Medicaid program no more than the hospital's purchasing cost for such covered outpatient drugs.

12 VAC 30-130-290. Scope and purpose.

A. DMAS shall implement and conduct a drug ~~use~~ *utilization* review program (DUR program) for covered drugs prescribed for eligible recipients. The program shall help to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause medically adverse events. The program shall provide for ongoing retrospective DUR, prospective DUR and an educational outreach program to educate practitioners on common drug therapy problems with the aim of improving prescribing practices. *As needed, the program shall also provide for electronic messages as well as rejected or denied services when such claims are not consistent with DUR criteria and requirements.* The primary objectives shall be:

1. Improving in the quality of care;
2. Maintaining program integrity (i.e., controlling problems of fraud and benefit abuse); and
3. Conserving program funds and individual expenditures.

B. Certain organized health care settings shall be exempt from the further requirements of retrospective and prospective DUR process as provided for in § 4401 of OBRA 90.

C. The purpose of retrospective drug utilization review shall be to screen for:

1. Monitoring for therapeutic appropriateness;
2. Overutilization and underutilization;
3. Appropriate use of generic products;
4. Therapeutic duplication;

5. Drug-disease/*health* contraindications;
6. Drug-drug interactions;
7. Incorrect drug dosage or duration of treatment;
8. Clinical abuse/misuse and fraud, and as necessary
9. Introduce to physicians and pharmacists remedial strategies to improve the quality of care rendered to their patients.

D. The purpose of prospective drug utilization review shall be to screen for:

1. Potential drug therapy problems due to therapeutic duplication;
2. Drug-disease/*health* contraindications;
3. Drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs);
4. Incorrect drug dosage or duration of drug treatment;
5. Drug-allergy interactions; and
6. Clinical abuse and misuse.

E. In instances where initial claims for reimbursement of covered services are determined to be in conflict with DUR criteria and requirements, such claims shall receive electronic messages or be rejected or denied, as appropriate, back to the dispensing pharmacist with notification as to the substance of the conflict. The dispensing pharmacist will be afforded the opportunity to provide an intervention, based on his professional expertise and knowledge, to modify the service to be claimed for reimbursement. If the modification no longer conflicts with the DUR criteria, the claim for the modified service shall be adjudicated for payment. If the modification requires additional information from the prescriber, the pharmacist shall advise the prescribing physician of the continuing conflict and advise the physician to seek prior authorization approval from either DMAS or the pharmacy benefits contractor for his treatment plans.

12 VAC 30-130-300. Retrospective DUR.

A. The retrospective DUR program shall provide, through drug claims processing and information retrieval systems, for ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and individuals receiving benefits under Title XIX of the Social Security Act.

B. The DUR program shall, on an ongoing basis, assess data on drug use against predetermined criteria and standards which have been approved by the DUR Board.

C. Summary data concerning identified exceptional drug utilization patterns shall be developed and submitted by DMAS to the DUR Board at least quarterly, or as often as monthly if requested by the DUR Board. This data shall include at least a summary of the drug therapy problems most often observed in the course of retrospective reviews, summaries of physician responses to educational

interventions, and the results of intensified reviews and monitoring of selected prescribers or dispensers.

12 VAC 30-130-310. Prospective DUR.

A. Patient medication profile. On and after January 1, 1993, pharmacists shall make a reasonable effort to maintain a patient medication record system for persons covered under Title XIX of the Social Security Act for whom prescriptions are dispensed. For purposes of this regulation, a reasonable effort shall have been made if the information set forth in subdivision 1 of this subsection is requested by the pharmacist or the pharmacist's designee from the patient or the patient's agent.

1. A reasonable effort shall be made by the participating pharmacist to obtain, record, and maintain at least the following information on each patient's profile:

- a. *Patient's* name, address, telephone number;
- b. Date of birth (or current age) and gender;
- c. Medical history

(1) Significant patient health problems known to the pharmacist,

(2) Prescription drug reactions or known allergies,

(3) A comprehensive list of prescription and nonprescription medications and legend drug administration devices known by the pharmacist to have been used by the patient; and

d. *Prescriber information to include, but not necessarily be limited to, his name, address, Medicaid and Drug Enforcement Agency (DEA) provider numbers.*

e. *Pharmacist's comments relevant to the patient's drug use, including any failure to accept the pharmacist's offer to counsel.*

2. Such information may be recorded in any system of records and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of counseling. DMAS or its designated agent is authorized to survey pharmacists' patients in order to determine compliance with and report on the mandates of federal and state law and regulations.

3. The information for patient profiles may be obtained from a patient's prescribing physician, hospital medical records, interviews with the patient, patient's family or agent, or a combination of the above.

4. Patient medication profiles shall be maintained for a period of not less than two years from the date of last entry or as necessary to comply with state or federal law.

B. Pharmacist's responsibilities. Upon receipt of each prescription and before dispensing the medication, a pharmacist shall perform prospective DUR based on his professional knowledge and the criteria and standards approved by the DUR Board, using the information contained in the patient's profile.

~~Each pharmacy is required to have DMAS' DUR Board approved criteria readily available for pharmacists to use in~~

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~~performing prospective DUR. If an exception to one or more prospective DUR criteria is identified, a message will be transmitted to the pharmacist. Claims may be rejected due to the exceptions to one or more criteria. Pharmacists may be required to obtain prior authorization, defined as the process of reviewing drugs to determine if medically justified prior to the submission of a claim for payment by Medicaid, in order to dispense the medications.~~

C. Patient counseling. Consistent with federal law and regulation a pharmacist must offer to discuss in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls with each individual receiving benefits or the caregiver of such individual who presents a prescription, matters which in the exercise of the pharmacist's professional judgment are deemed to be significant. The offer to counsel shall be made consistent with the requirements in § 54.1-3319 B of the Code of Virginia.

The specific areas of counseling shall include those matters listed below that, in the exercise of his professional judgment, the pharmacist considers significant:

1. Name and description of the medication;
2. Dosage form and amount, route of administration, and duration of therapy;
3. Special directions for preparation, administration and use by the patient as deemed necessary by the pharmacist;
4. Common or severe side or adverse effects or interactions that may be encountered which may interfere with the proper use of the medication as was intended by the prescriber, and the action required if they occur;
5. Techniques for self-monitoring drug therapy;
6. Proper storage;
7. Prescription refill information;
8. Action to be taken in the event of a missed dose.
9. Any other matters the pharmacist considers significant.

Alternative forms of patient information may be used to supplement, but not replace, oral patient counseling.

A pharmacist shall not be required to provide oral consultation when a patient or a patient's agent refuses the pharmacist's attempt to consult.

When prescriptions are delivered to the patient or patient's agent who resides outside of the local telephone calling area of the pharmacy, the pharmacist shall either provide a toll free telephone number or accept collect calls from such patient or patient's agent.

Patient counseling as described in this part shall not be required for inpatients of a hospital or institution where a nurse or other person authorized by the Commonwealth is administering the medication.

D. Compliance monitoring. An ongoing program shall be developed for the purpose of monitoring pharmacists' compliance with the prospective DUR requirements of this part.

The director may establish the compliance monitoring program through agreements with other state agencies, the DUR Board or other organizations.

As determined to be appropriate by DMAS, the methods used to monitor compliance shall include but shall not be limited to:

1. On-site inspections,
2. Patient surveys,
3. Desk audits, or
4. Retrospective pharmacy profile reviews.
5. *Electronic messages as well as rejection or denial of claims until there is resolution of the conflict with DUR criteria.*

12 VAC 30-130-320. Criteria and standards for DUR.

The DUR Board shall establish and revise as necessary a list of approved criteria and standards which shall be consistent with the following:

1. Compendia which shall consist of at least the (i) American Hospital Formulary Service Drug Information, (ii) United States Pharmacopeia-Drug Information, (iii) ~~American Medical Association Drug Evaluations;~~ *MICROMEDICS*, (iv) *Facts and Comparisons*, (v) *Drug Information Handbook*.
2. The peer-reviewed medical literature; and
3. Commonly accepted standards of medical practice as used by practitioners across the Commonwealth.

12 VAC 30-130-330. Educational program.

A. DMAS shall develop an educational program designed to further educate physicians and pharmacists to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause adverse actions. The purpose of such program shall be to:

1. Identify and reduce the frequency of patterns of fraud, abuse, overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs;
2. Identify and reduce the potential and actual severe adverse reactions to drugs; and
3. Improve prescribing and dispensing practices.

Such program shall include education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions and clinical abuse/misuse.

B. The educational program shall be accomplished through the use of interventions. The interventions shall be directed to physicians and pharmacists and shall address therapy problems or individuals identified in the course of *prospective and retrospective* drug use reviews as having exceptional drug utilization patterns. The educational program shall have

at least four types of interventions which shall be used as appropriate. These interventions shall include:

1. Information dissemination sufficient to ensure the ready availability to participating physicians and pharmacists of information concerning the DUR Board's duties, powers, and basis for its standards;
2. Written, oral, or electronic, and telephonic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, which is communicated in a manner designed to ensure the privacy of patient-related information;
3. Face-to-face discussions between health care professionals who are experts in appropriate and medically necessary drug therapy and selected prescribers and pharmacists who have been targeted for intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and
4. Intensified review or monitoring of selected prescribers or dispensers.

C. DMAS may establish the educational program through contracts with accredited health care educational institutions, state medical societies or state pharmacists associations/societies or other organizations *which may include, but shall not necessarily be limited to, a pharmacy benefits manager*. The educational program will use, but not be limited to, as a basis for its educational activities the compendia and literature referenced in these regulations and data obtained primarily from the *prospective and retrospective* DUR process, and provided by the DUR Board, on common drug therapy problems and other utilization and drug therapy issues listed in these regulations. The educational program shall be based on recommendations submitted by the DUR Board.

D. A report shall be prepared by the DUR Board and submitted to the director at least semi-annually evaluating the success of the interventions, determining if the interventions improved the quality of drug therapy, and making recommendations for modifications in the program, if appropriate.

12 VAC30-130-335. Other interventions.

As permitted by all applicable federal and state laws and regulations, DMAS, or its designee may intervene in the process of the adjudication of claims for payment of prescription drugs. Such interventions may entail, but shall not be limited to, electronic messages, rejecting claims pending further resolution, or requiring prior authorization for selected prospective DUR criteria.

12 VAC 30-130-340. DUR Board.

A. The Director of DMAS shall establish the DUR Board either directly or through a contract with an outside vendor. The DUR Board shall submit recommendations on prospective and retrospective drug use review to the director. The director reserves the right to reject such recommendations and shall so notify the board consistent with federal requirements. The

DUR Board shall adhere to all the requirements of client confidentiality with respect to patient specific information.

B. The DUR Board shall consist of 13 members. At least one-third of the members shall be pharmacists. At least one-third but no more than 51% of the members shall be physicians. There shall be at least one but no more than two nurse members. All pharmacist, physician and nurse members shall be licensed by the Commonwealth with such licenses in good standing. The Director of DMAS shall invite submission of candidates from each of these groups. Other individuals and groups interested in submitting names of candidates for the DUR Board shall indicate their interest to the director in writing. The director shall appoint the physician members from candidates submitted by the Medical Society of Virginia, the Old Dominion Medical Society, and each of the medical schools in the Commonwealth. The director shall appoint the pharmacist members from candidates submitted by the Medical College of Virginia/Virginia Commonwealth University School of Pharmacy, the Virginia Pharmaceutical Association, Virginia Chain Drug Store Association, and the Virginia Society of Consultant Pharmacists. The director shall appoint the nurse member or members from candidates submitted by the Virginia Nurses Association.

1. At least five of the physicians and pharmacists appointed to the DUR Board shall be licensed and actively practicing.

2. All individuals appointed to the DUR Board shall demonstrate knowledge and expertise in one or more of the following areas:

- a. The clinically appropriate prescribing of covered outpatient drugs;
- b. The clinically appropriate dispensing and monitoring of outpatient drugs;
- c. Drug use review, evaluation, and intervention; and
- d. Medical quality assurance.

C. Consistent with its by-laws, the DUR Board members shall serve at the pleasure of the director, for terms established by the director. Vacancies shall be filled in the same manner as the original appointment.

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

E. The DUR Board shall have the following duties:

1. The DUR Board shall meet no less than quarterly and, in addition, upon call by the director. A quorum for action by the DUR Board shall be seven voting members.

2. The DUR Board shall elect from among its members a chairperson and a vice-chairperson. Officers may be elected to successive terms.

3. A full record of the board's proceedings shall be kept. The record shall be open to public inspection at all reasonable times consistent with the DMAS' hours of operation.

4. The DUR Board shall establish such rules as are necessary to conduct its business.

Emergency Regulations

5. The DUR Board shall review and approve the retrospective DUR criteria for consistency with the requirements set forth in these regulations.

6. The DUR Board shall establish a listing of criteria and standards for ~~use~~ *utilization* in prospective drug use reviews. The criteria and standards may include commercial software packages, drug interaction handbooks, and other published and written criteria.

7. The DUR Board shall submit a report at least semi-annually evaluating the success of interventions and making recommendations for modifications to the educational program, if appropriate. The DUR Board shall evaluate the educational program developed by DMAS or DMAS' vendor pursuant to the requirements of these regulations and make recommendations concerning the appropriate mix of intervention approaches.

8. The DUR Board shall prepare a report on an annual basis for submission to the director which shall include a description of the activities of the DUR Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of the interventions on quality of care, an estimate of the costs and savings generated as a result of such program and other information specified by the director. DMAS shall prepare and submit, on an annual basis, a report to the U.S. Secretary of Health and Human Services that incorporates the DUR Board's report and conforms to the requirements set forth in federal regulations.

12 VAC 30-130-400. Utilization review process.

A. The program shall provide, through its drug claims processing and information retrieval systems, for the ongoing periodic *retrospective* examination of claims data and other records for targeted facilities to identify patterns of inappropriate or medically unnecessary care for individuals receiving benefits under Title XIX of the Social Security Act.

B. The program shall, on an ongoing basis, assess data on drug use against predetermined standards (as described in this section) including, but not limited to, monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug/drug interactions, incorrect drug dosage or duration of treatment, clinical abuse/misuse, fraud, and, as necessary, introduce to physicians and pharmacists remedial strategies in order to improve the quality of care.

C. The Department of Medical Assistance Services may assess data on drug use against such standards as the American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information, ~~American Medical Association Drug Evaluations~~, *MICROMEDICS*, *Facts and Comparisons*, *Drug Information Handbook* and any other appropriate peer-reviewed medical literature.

/s/ Mark R. Warner
Governor

Date: December 23, 2003

VA.R. Doc. No. R04-74; Filed December 24, 2003, 11:52 a.m.

Title of Regulation: **12 VAC 30-50. Amount, Duration and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-210).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: January 4, 2004, through January 3, 2005.

Agency Contact: Javier Menendes, R.Ph., Division of Health Care Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 786-1680, or e-mail jmenendes@dmas.state.va.us.

Preamble:

This regulatory action qualifies as an emergency pursuant to the authority of § 2.2-4011 of the Code of Virginia because it is responding to mandates in the Virginia Appropriation Act (the 2003 Acts of Assembly, Chapter 1042 Items 325 UU and VV) that must be effective within 280 days from the date of its enactment and these regulatory changes are not otherwise exempt under the provisions of the § 2.2-4006 of the Code of Virginia.

The purpose of this action is to implement a program of prospective and retrospective utilization review and prior authorization of pharmacy services for noninstitutionalized and institutionalized (nursing facility) recipients who are prescribed large numbers of different prescription (legend) drugs within specific time periods. Such utilization review of covered services is permitted by 42 CFR 440.230 (d) "[t]he agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures."

The amendments require prior authorization of drugs for both institutionalized and noninstitutionalized Medicaid recipients when they pass the established thresholds within the specified time frames.

12 VAC 30-50-210. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA 90 § 4401), shall not be covered.

2. Nonlegend drugs shall be covered by Medicaid in the following situations:

- a. Insulin, syringes, and needles for diabetic patients;
- b. Diabetic test strips for Medicaid recipients under 21 years of age;
- c. Family planning supplies;
- d. Designated categories of nonlegend drugs for Medicaid recipients in nursing homes; and

e. Designated drugs prescribed by a licensed prescriber to be used as less expensive therapeutic alternatives to covered legend drugs.

3. Legend drugs are covered for a maximum of a 34-day supply per prescription per patient with the exception of the drugs or classes of drugs identified in 12 VAC 30-50-520. FDA-approved drug therapies and agents for weight loss, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established by the Social Security Administration in effect on April 7, 1999, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician. For prescription orders for which quantity exceeds a 34-day supply, refills may be dispensed in sufficient quantity to fulfill the prescription order within the limits of federal and state laws and regulations.

4. ~~Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia,~~ Prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products (i) unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written or (ii) unless the drug class is subject to the preferred drug list.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

7. Drug prior authorization.

a. Definitions. The following words and terms used in these regulations shall have the following meaning unless the context clearly indicates otherwise:

~~"Board" means the Board for Medical Assistance Services.~~

~~"Committee" means the Medicaid Prior Authorization Advisory Committee.~~

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

~~"Director" means the Director of Medical Assistance Services.~~

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency supply" means a 72-hour supply of the prescribed medication that may be dispensed if the prescriber cannot readily obtain authorization, or if the physician is not available to consult with the pharmacist, including after hours, weekends, holidays or other criteria defined by the P&T Committee and DMAS.

"Pharmacy and Therapeutics Committee (P&T Committee)" or "committee" means the committee formulated to review therapeutic classes, conduct clinical reviews of specific drugs, recommend additions or deletions to the preferred drug list, and perform other functions as required by the department.

"Preferred drug list (PDL)" means the list of drugs that meet the safety, clinical efficacy, and pricing standards employed by the P&T Committee and adopted by the department that may be prescribed and dispensed in the Virginia Medicaid fee-for-service program.

"Prior authorization," as it relates to the threshold program, means the process of reviewing drugs with respect to established limits or criteria to determine the appropriateness of all existing prescriptions and newly prescribed medications to help ensure appropriate, quality, and cost-effective prescription drug treatments. The process is also designed to prevent waste and abuse of the pharmacy program by assisting providers and the department in identifying clients who may be accessing multiple physicians and pharmacies.

"Utilization review" means the prospective and retrospective processes employed by the agency to evaluate the medical necessity of reimbursing for certain covered services.

"Therapeutic class" means a grouping of medications sharing the same Specific Therapeutic Class Code (GC3) within the Federal Drug Data File published by First Data Bank, Inc.

~~b. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 11 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; one member shall be a consumer of mental health services; and one shall be a Medicaid recipient.~~

~~(1) A quorum for action of the committee shall consist of six members.~~

~~(2) The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.~~

~~(3) The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society, the Psychiatric Society of Virginia, the Virginia Pharmaceutical Association, the Virginia Alliance for the Mentally Ill, and the Virginia Mental Health Consumers Association when making appointments to the committee.~~

~~(4) The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.~~

~~e. Duties of the committee.~~

Emergency Regulations

~~(1) The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.~~

~~(2) In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 2.2 4000 et seq. of the Code of Virginia). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days' written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days' notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.~~

~~(3) In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.~~

~~d. Prior authorization of prescription drug products; coverage.~~

~~(1) The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.~~

~~(2) Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.~~

~~(3) In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.~~

~~(4) The committee shall not review any drug for which it has recommended or the board has required prior~~

~~authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.~~

~~(5) Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.~~

~~e. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.~~

~~f. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.~~

~~b. through g. (Reserved - Pharmacy prior authorization and preferred drug list.)~~

~~h. Pharmacy prior authorization program and threshold limits. Pursuant to § 1927 of the Act and 42 CFR 440.230, the department shall require the prior authorization of legend drugs when both institutionalized and noninstitutionalized recipients are prescribed high numbers of legend drugs. Over-the-counter drugs and legend drug refills shall not count as a unique prescription for the purposes of prior authorization as it relates to the threshold program.~~

~~(1) Prior authorization shall be required for noninstitutionalized Medicaid recipients whose current volume of prescriptions exceeds nine unique prescriptions within 180 days and as may be further defined by the agency's guidance documents for pharmacy utilization review, limitations, and the prior authorization program. This prior authorization shall be required regardless of whether or not the prescribed drug appears on the preferred drug list of legend drugs. All recipients subject to these prior authorization limits shall be given advance notice of such limits and shall be advised of their rights to appeal. Such appeals shall be considered and responded to pursuant to 12 VAC 30-110-10 et seq.~~

~~(2) Prior authorization shall be required for institutionalized Medicaid recipients whose current volume of prescriptions exceeds 9 unique prescriptions within 30 days and as may be further defined by the agency's guidance documents for pharmacy utilization review, limitations, and prior authorization program. The prior authorization shall be required regardless of whether or not the drug is listed on the PDL of legend drugs. All recipients subject to these prior authorization~~

limits shall be given advance notice of such limits and shall be advised of their rights to appeal. Such appeals shall be considered and responded to pursuant to 12 VAC 30-110-10 et seq.

(3) Prior authorization shall consist of prospective and retrospective drug therapy review by a licensed pharmacist or pharmacy technician to ensure that all predetermined clinically appropriate criteria, as established by the department, have been met before the prescription may be dispensed. Prior authorization shall be obtained through a call center staffed with appropriate clinicians, or through written or electronic communications (e.g., faxes, mail). Responses by telephone or other telecommunications device within 24 hours of a request for prior authorization shall be provided. The dispensing of a 72-hour emergency supply of the prescribed drug shall be permitted and dispensing fees shall be paid to the pharmacy for such emergency supply.

(4) Exclusion of protected groups from pharmacy prior authorization requirements. The following groups of Medicaid eligibles shall be excluded from all pharmacy prior authorization requirements: individuals enrolled in hospice, services through PACE or pre-PACE programs; minor children who are the responsibility of the juvenile justice system; refugees who are not otherwise eligible in a Medicaid covered group; persons who are receiving services through the Medicaid Family Planning waiver.

(5) Exclusion of protected institutions from pharmacy threshold prior authorization. For the purposes of threshold prior authorization, nursing facility residents do not include residents of the Commonwealth's mental retardation training centers. For the purposes of threshold prior authorization, noninstitutionalized recipients do not include recipients of services at Hiram Davis Medical Center.

8. Coverage of home infusion therapy. This service shall be covered consistent with the limits and requirements set out within home health services (12 VAC 30-50-160). Multiple applications of the same therapy (e.g., two antibiotics on the same day) shall be covered under one service day rate of reimbursement. Multiple applications of different therapies (e.g., chemotherapy, hydration, and pain management on the same day) shall be a full service day rate methodology as provided in pharmacy services reimbursement.

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

C. Prosthetic devices.

1. Prosthetic services shall mean the replacement of missing arms, legs, eyes, and breasts and the provision of any internal (implant) body part. Nothing in this regulation shall be construed to refer to orthotic services or devices or organ transplantation services.

2. Artificial arms and legs, and their necessary supportive attachments, implants and breasts are provided when

prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary and preauthorized for the minimum applicable component necessary for the activities of daily living.

3. Eye prostheses are provided when eyeballs are missing regardless of the age of the recipient or the cause of the loss of the eyeball. Eye prostheses are provided regardless of the function of the eye.

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

/s/ Mark R. Warner
Governor

Date: December 23, 2003

VA.R. Doc. No. R04-72; Filed December 24, 2003, 11:53 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) - Beaver Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the draft Total Maximum Daily Load (TMDL) Report for Beaver Creek in Washington County and Bristol, Virginia. The stream is listed on the 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for the General Standard (benthic) and Bacteria.

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.

Beaver Creek is located in Washington County and Bristol, Virginia. The impaired segment of Beaver Creek is 13.5 miles long. It begins upstream at the Route 611 bridge and continues to the Tennessee/Virginia state line in Bristol.

The final public meeting on the development of the TMDL to address the benthic and bacteria impairments for Beaver Creek will be held on Wednesday, February 11, 2004, at 7 p.m. in the Circuit Courtroom on the second floor of the Bristol Virginia Courthouse located at 497 Cumberland Street in Bristol, Virginia. The purpose of the study report is to identify sources and determine reductions of pollutants so that the stream can meet the water quality standards.

The public comment period will end on March 12, 2004. A copy of the draft Total Maximum Daily Load Report is available upon request or can be viewed at the DEQ website: <http://www.deq.state.va.us> after February 9, 2004. Address questions or information requests to Nancy T. Norton, P. E. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.state.va.us.

Total Maximum Daily Load (TMDL) - Clinch River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the draft Total Maximum Daily Load (TMDL) Report for Clinch River in Tazewell County. This stream is listed on the 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for the General Standard (Benthics).

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 impaired segment of Clinch River is located in Tazewell County. It is 5.5 miles long and begins at the upstream confluence with Lincolnshire Branch in Tazewell. The

downstream end of the Clinch River segment is at the confluence with Plum Creek. The impaired segment of Clinch River flows along Riverside Drive, Route 16 and Pisgah Road or Route 632 through Tazewell and River Jack.

The final public meeting on the draft TMDL report will be held Tuesday, February 10, 2004, at 7 p.m., in the Fuller-Peery Exhibition Hall at Tazewell County Fairgrounds in Tazewell, Virginia. The purpose of the study report is to identify sources and determine reductions of pollutants so that the stream can meet the water quality standards.

The public comment period will end on March 12, 2004. A copy of the draft Total Maximum Daily Load Report is available upon request or can be viewed at the DEQ website, www.deq.state.va.us, after February 9, 2004. Address questions or information requests to Nancy T. Norton, P. E. 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) - Lewis Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the draft Total Maximum Daily Load (TMDL) Report for Lewis Creek in Tazewell County, Virginia. The stream is listed on the 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for the General Standard (Benthics).

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.

Lewis Creek is located in Russell County and flows through Honaker and the communities of Putnam and Hickory Junction. It is 4.84 miles long and begins at the upstream confluence with Stone Branch and extends to Clinch River.

The final public meeting on the draft TMDL report to address the benthic impairment for Lewis Creek will be held on Thursday, February 12, 2004, 7 p.m. at the Honaker Town Hall in Honaker, Virginia. The purpose of the study report is to identify sources and determine reductions of pollutants so that the stream can meet the water quality standards.

The public comment period will end on March 12, 2004. A copy of the draft TMDL report is available upon request or can be viewed at the DEQ website, <http://www.deq.state.va.us>, after February 9, 2004. Contact Nancy T. Norton, P. E. with any questions or information requests. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.state.va.us.

STATE WATER CONTROL BOARD

Proposed Consent Special Order Augusta County Service Authority Fishersville Regional Sewage Treatment Plant

The State Water Control Board proposes to enter into a consent special order with the Augusta County Service Authority (ACSA). The parties have agreed to the terms of a Consent Special Order for settlement of violations of State Water Control Law at the Fishersville Regional Sewage Treatment Plant (FRSTP).

The ACSA operates the FRSTP under a VPDES Permit authorizing discharge of treated sewage into Christians Creek. Based on a review of records for the FRSTP, DEQ found the ACSA to be in violation of its VPDES permit. Specifically, DEQ found the FRSTP to be in violation of certain VPDES permit effluent limits and that the plant had experienced multiple losses of solids to the receiving stream. The proposed order requires the ACSA to complete a \$5.5 million upgrade to the FRSTP and to maintain optimum treatment in the interim. The proposed order would also assess a civil charge against the ACSA in settlement of the violations. Under the proposed order the ACSA would also complete a Supplemental Environmental Project (SEP) as a partial offset of the civil charge. The SEP involves installation of equipment at the Woodrow Wilson Pumping Station that will remotely and continuously monitor the pumping station and will serve to prevent or minimize accidental sewer overflows through warning the ACSA by radio signal at the commencement of any overflow event.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to Edward A. Liggett, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to ealiggett@deq.state.va.us. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

Proposed Consent Special Order Robert W. Claytor

The State Water Control Board proposes to enter into a consent special order with Robert W. Claytor. The parties have agreed to the terms of a consent special order for settlement of violations of State Water Control Law at an underground storage tank (UST) facility.

Mr. Claytor owns a UST facility located at 314 West King Street in Strasburg, Virginia, and stores petroleum in these USTs under the requirements of the state underground storage tank regulation. Based on an inspection of the facility

and review of submitted documentation, DEQ found Mr. Claytor to be in violation of the regulation. While the facility has been brought into compliance with the regulation, the proposed order will assess a civil charge against Mr. Claytor in settlement of the past violations.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to David C. Robinett, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to dcrobinett@deq.state.va.us. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

Proposed Consent Special Order H. N. Funkhouser and Co.

The State Water Control Board proposes to enter into a consent special order with H. N. Funkhouser and Co. The parties have agreed to the terms of a consent special order for settlement of violations of State Water Control Law at an underground storage tank (UST) facility.

Funkhouser owns a UST facility located at 5116 Main Street in Stephens City, Virginia, and stores petroleum in these USTs under the requirements of the state underground storage tank regulation. Based on an inspection of the facility and review of submitted documentation, DEQ found Funkhouser to be in violation of the regulation. The proposed order will require Funkhouser to replace the existing USTs, submit release detection records for the new USTs and will assess a civil charge in settlement of the violations.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to David C. Robinett, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to dcrobinett@deq.state.va.us. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

Proposed Consent Special Order JERM Ltd.

The State Water Control Board proposes to enter into a consent special order with JERM Ltd. The parties have agreed to the terms of a consent special order for settlement

General Notices/Errata

of violations of State Water Control Law at an underground storage tank (UST) facility.

JERM owns a UST facility located at 911 Front Street in Lovingson, Virginia, and stores petroleum in these USTs under the requirements of the state underground storage tank regulation. Based on an inspection of the facility and review of submitted documentation, DEQ found JERM to be in violation of the regulation. The proposed order will require the closure of the USTs and will assess a civil charge against JERM in settlement of the violations.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to David C. Robinett, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail todcrobinett@deq.state.va.us. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

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
RESPONSE TO PETITION FOR RULEMAKING-RR13
FAST-TRACK RULEMAKING ACTION-RR14

ERRATA

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: 18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers.

Publication: 20:8 VA.R. 822-824 December 29, 2003.

Correction to Final Regulation:

Page 824, 18 VAC 65-20-570 is shown twice. The second version is not valid.

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 30, 2004 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Suite 696, Richmond, Virginia.♿
(Interpreter for the deaf provided upon request)

A meeting of the Enforcement Committee to review enforcement cases.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond VA 23230, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail boa@boa.state.va.us.

February 6, 2004 - 10 a.m. -- Open Meeting
Holiday Inn-Richmond, 6531 West Broad Street, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to discuss general business matters including complaint cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board 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, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail boa@boa.state.va.us.

COMMONWEALTH COUNCIL ON AGING

January 28, 2004 - 11:30 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 welcomed.

Contact: Marsha Mucha, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

January 28, 2004 - 2 p.m. -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting of the Public Relations Committee. Public comments welcomed.

Contact: Marsha Mucha, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Corn Board

February 12, 2004 - 8 a.m. -- Open Meeting
DoubleTree Hotel, Richmond Airport, 5501 Eubank Road, Richmond, Virginia.♿

A meeting of the board to discuss checkoff revenues resulting from sale of the 2003 corn crop and approve the previous meeting minutes. The board will also hear FY 2003-2004 project reports and receive FY 2004-2005 project proposals. Following all of the presentations, the group will make funding decisions for the fiscal year beginning July 1, 2004. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room

Calendar of Events

906, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phickman@vdacs.state.va.us.

Virginia Cotton Board

† **March 9, 2004 - 9:30 p.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 VPI&SU, VSU, and other groups for the year 2004-2005. During the meeting financial reports and minutes of the board's last meeting 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

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, 2004 - 10 a.m. -- Open Meeting
Virginia Thoroughbred Association, 38-B Garrett Street, Warrenton, Virginia. ♿

The board will review the minutes of the last meeting, its current financial statement, and ongoing projects for 2004. The board will also discuss the grant guidelines. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: 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) 786-3122.

Virginia Soybean Board

† **March 11, 2004 - 8 a.m.** -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. ♿

The board will discuss checkoff revenues resulting from sales of the 2003 soybean crop and approve previous meeting minutes. The board will hear project reports for FY 2003-2004 and project proposals for FY 2004-2005. Funding decisions will be made for the fiscal year beginning July 1, 2004. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in

order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phickman@vdacs.state.va.us.

Virginia Winegrowers Advisory Board

February 10, 2004 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia. ♿

A board meeting to consider committee reports and a report from a representative of the Alcoholic Beverage Control Board. There will be a presentation of the board's financial statement and hearing and approval of minutes of the last board meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Mary Davis-Barton, Board Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-7685, FAX (804) 786-3122, e-mail mdavis-barton@vdacs.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

March 23, 2004 - 10 a.m. -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A business meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 554-3402, (804) 662-9333/TTY ♿, e-mail jlhoneycutt@vdh.state.va.us.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

January 27, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Professional Engineers Section. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should

contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

February 5, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Landscape Architects Section. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

February 6, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Architects Section. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

February 12, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Certified Interior Designers Section. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an

appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

† February 12, 2004 - 1 p.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 454, Richmond, Virginia. ♿

A meeting to conduct an informal fact-finding hearing.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

March 11, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the full board. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

February 6, 2004 - 10 a.m. -- Open Meeting

March 5, 2004 - 10 a.m. -- Open Meeting

April 2, 2004 - 10 a.m. -- Open Meeting


Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. ♿

A monthly meeting to review projects submitted by state agencies.


Contact: Richard L. Ford, AIA Chairman, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0329, toll free (804) 786-6152, or e-mail rford@comarchs.com.

Calendar of Events


VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

February 18, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupation Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct board business.


Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail asbestos@dpor.state.va.us.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

February 19, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

February 19, 2004 - 9:30 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. 

March 13, 2004 - 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 of the Board of Audiology and Speech-Language Pathology**. The purpose of the proposed action is to increase certain fees related to applications and renewal of licensure and change from a biennial renewal to an annual renewal.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.


Public comments may be submitted until March 13, 2004, to Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Agency 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 FOR BARBERS AND COSMETOLOGY

January 26, 2004 - 9 a.m. -- Open Meeting


NOTE: DATE CHANGE

April 19, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. 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: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail barberscosmo@dpor.state.va.us.

BOARD FOR THE BLIND AND VISION IMPAIRED


† April 13, 2004 - 1 p.m. -- Open Meeting
Department for the Blind and Vision Impaired, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review information regarding Department for the Blind and Vision Impaired activities and operations, review expenditures from the board endowment fund, and discuss other issues raised for the board members.

Contact: Kathy C. Proffitt, Administrative Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail proffikc@dbvi.state.va.us

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Statewide Rehabilitation Council for the Blind and Vision Impaired

† March 13, 2004 - 10 a.m. -- Open Meeting
Department for the Blind and Vision Impaired, Administrative Headquarters, 397 Azalea Avenue, Richmond VA 23227  (Interpreter for the deaf provided upon request)

A meeting of the council to advise the Department for the Blind and Vision Impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Chief Deputy Commissioner, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX

(804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail taylorjg@dbvi.state.va.us.

BOARD FOR BRANCH PILOTS

February 2, 2004 - 8:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿

A meeting of the Board for Branch Pilots Examination Administrators to conduct examinations.

Contact: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

February 3, 2004 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿

A general business meeting. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **February 17, 2004 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Northern Area Review Committee will conduct general business, including a review of local Chesapeake Bay Preservation Area programs for the northern area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail celliot@cblad.state.va.us.

† **February 17, 2004 - 2 p.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Southern Area Review Committee will conduct general business, including a review of local Chesapeake Bay Preservation Area programs for the southern area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe

Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail celliot@cblad.state.va.us.

STATE BOARD FOR COMMUNITY COLLEGES

March 17, 2004 - 1:30 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Godwin-Hamel Board Room, 15th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committees will meet as follows: Academic and Student Affairs, Audit, and Budget and Finance will meet at 1:30 p.m.; Facilities and Personnel Committees will meet at 3 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

March 18, 2004 - 8:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Godwin-Hamel Board Room, 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 at least five working days prior to the meeting.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

COMPENSATION BOARD

† **February 18, 2004 - 11 a.m.** -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A monthly board meeting.

Contact: Cindy Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

Cave Board

† **January 31, 2004 - 11 a.m.** -- Open Meeting
The Nature Conservancy, 490 Westfield Road, Charlottesville, Virginia.

A regular meeting. Committee meetings begin at 11 a.m. The full board meeting begins 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.

Calendar of Events

BOARD FOR CONTRACTORS

January 27, 2004 - 9 a.m. -- Open Meeting

January 29, 2004 - 9 a.m. -- Open Meeting

February 3, 2004 - 9 a.m. -- Open Meeting

† **February 5, 2004 - 9 a.m.** -- Open Meeting

February 10, 2004 - 9 a.m. -- Open Meeting

February 11, 2004 - 1:30 p.m. -- CANCELED

February 18, 2004 - 9 a.m. -- Open Meeting

February 24, 2004 - 9 a.m. -- Open Meeting

February 26, 2004 - 9 a.m. -- Open Meeting

March 9, 2004 - 9 a.m. -- Open Meeting

March 16, 2004 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Informal fact-finding conferences. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-0946 at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive 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 contractors@dpor.state.va.us.

February 11, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Tradesman and Education Committee to conduct committee business. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive 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 contractors@dpor.state.va.us.

March 2, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A regular meeting that will 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 conducted in closed session.

Contact: Eric L. Olson, Executive 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 contractors@dpor.state.va.us.

† **April 13, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: Eric L. Olson, Executive 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 contractors@dpor.state.va.us.

BOARD OF COUNSELING

January 30, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

An Informal Conference Committee will meet to hold informal conferences pursuant to § 2.2-4019 of the Code of Virginia. The committee will meet in open and closed sessions.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 6th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.

February 12, 2004 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

The Credentials Committee will meet to review and discuss applicant credentials.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.state.va.us.

February 13, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 1, Richmond, Virginia.

A meeting of the Executive Committee to review the board meeting agenda. There will be no public comment.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.state.va.us.

February 13, 2004 - 10 a.m. -- Open Meeting
Department of Health Professions 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A business meeting to include reports from standing committees and any other disciplinary or regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.state.va.us

February 13, 2004 - 10 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

February 27, 2004 - 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 115-20, Regulations Governing the Practice of Professional Counseling, 18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapy, and 18 VAC 115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.** The purpose of the proposed action is to comply with a statutory mandate to require continuing education. The board is proposing a requirement of 20 hours per year and a provision for an inactive licensure status to accommodate individuals who are not actively practicing and who may be unable to meet the continuing competency requirements.

Statutory Authority: §§ 54.1-103, 54.1-2400 and 54.1-3505.1 of the Code of Virginia.

Public comments may be submitted until February 27, 2004, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, 6th Floor, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 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

† **February 6, 2004 - 9 a.m.** -- Open Meeting
† **February 27, 2004 - 9 a.m.** -- Open Meeting
† **March 5, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia.

A Special Conference Committee will convene to hold informal conferences. 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 Cheri.Emma-Leigh@dhp.state.va.us.

February 27, 2004 - 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 update certain requirements and terminology, to clarify the board's requirements, especially related to dental education, to eliminate a jurisprudence examination and add requirements for additional training for applicants who have

had multiple examination failures. Amendments also modify educational, monitoring and equipment requirements for administration of various forms of analgesia, sedation and anesthesia as minimally necessary to ensure public safety.

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until February 27, 2004, to Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, 6th Floor, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

March 13, 2004 - 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 limit the number of continuing education hours that may be obtained through home study to five hours out of a requirement of 15 hours per year.

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

Public comments may be submitted until March 13, 2004, to Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, 6th Floor, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency 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.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

February 19, 2004 - 11 a.m. -- Open Meeting
March 18, 2004 - 11 a.m. -- Open Meeting
† **April 15, 2004 - 11 a.m.** -- Open Meeting
Department of General Services, Eighth Street Office Building,
3rd Floor, Richmond, Virginia. ♿ (Interpreter for the deaf
provided upon request)

A monthly meeting to review requests submitted by localities to use design-build or construction management type contracts. Contact Division of Engineering and Building to confirm meeting.

Contact: Rhonda M. Bishton, Administrative Assistant, Department of General Services, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/♿, or e-mail rbishton@dgs.state.va.us.

Calendar of Events

BOARD OF EDUCATION

February 2, 2004 - 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 Education intends to adopt regulations entitled **8 VAC 20-670, Regulations Governing the Operation of Private Day Schools for Students with Disabilities**. Private day schools for students with disabilities are currently regulated by the Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits, which also covers private career schools. The purpose of these planned regulations is to separate the current complex and intertwined regulations. It is intended that revised regulations for the career schools and new regulations for the private day schools for students with disabilities be promulgated to provide clarity and specificity for each type of school.

Statutory Authority: §§ 22.1-16 and 22.1-321 of the Code of Virginia.

Contact: Carolyn Hodgins, Specialist, Private Day Schools, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-4551 or FAX (804) 225-2524.

February 2, 2004 - 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 Education intends to amend regulations entitled **8 VAC 20-340, Regulations Governing Driver Education**. The purpose of the proposed action is to require a minimum number of miles driven during the behind-the-wheel phase of driver education instruction pursuant to amendments to § 22.1-205 of the 2001 Acts of Assembly.

Statutory Authority: §§ 22.1-16, 22.1-205 and 46.2-334 of the Code of Virginia.

Contact: Vanessa Wigand, Specialist in Driver Education, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-3300 or FAX (804) 225-2524.

February 25, 2004 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Conference Rooms C and D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

March 24, 2004 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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.

DEPARTMENT OF EDUCATION

April 1, 2004 - 8:30 a.m. -- Open Meeting
April 2, 2004 - 8:30 a.m. -- Open Meeting
Radisson Hotel Historic Richmond, 301 West Franklin Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the State Special Education Advisory Committee. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Please note that persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance so that the appropriate arrangements may be made.

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.

Advisory Board on Teacher Education and Licensure

January 26, 2004 - 9 a.m. -- Open Meeting
March 15, 2004 - 9 a.m. -- Open Meeting
† April 19, 2004 - 9 a.m. -- Open Meeting
Sheraton Richmond West, 6624 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last minute changes in time or location. Persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance so that the appropriate arrangements may be made.

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.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **February 4, 2004 - 3 p.m.** -- Open Meeting
Timbrook Public Safety Center, 231 East Piccadilly Street, Winchester, Virginia.

A meeting to discuss CERT grant approval and review of an off-line independent study course for CERTs.

Contact: L.A. Miller, Fire and Rescue Chief, Winchester Fire and Rescue Department, 231 E. Piccadilly St., Suite 330, Winchester, VA 22601, telephone (540) 662-2298 or (540) 662-4131/TTY ☎

DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION

† **March 24, 2004 - 10 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, Room 204, Richmond, Virginia.

A quarterly meeting of the VADRA Council.

Contact: Claudia Farr, Director, Department of Employment Dispute Resolution, 830 E. Main St., Suite 400, Richmond, VA 23219, telephone (804) 786-7994, e-mail vadra@edr.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 26, 2004 - 7 p.m. -- Open Meeting
Warrenton Community Center, 430 East Shirley Avenue, Warrenton, Virginia. ♿

The first public meeting on the development of a bacteria TMDL for a segment of Great Run Watershed located in Fauquier County. The public comment period closes on February 24, 2004.

Contact: Katherine Bennett, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3896, FAX (703) 583-3841, e-mail kebennett@deq.state.va.us.

January 26, 2004 - 7 p.m. -- Open Meeting
Tacoma Community Center, Stone Mountain Road (approximately 0.2 miles south of Alternate Route 58 between Coeburn and Norton) Tacoma, Virginia. ♿

The final public meeting on the development of a fecal coliform bacteria TMDL for the Sepulcher Creek, Toms Creek/Little Toms Creek and Crab Orchard Branch watersheds in the Guest River drainage. In addition, implementation planning for the approved benthic TMDL and potential implementation for the draft bacteria TMDL will begin. The public comment period closes on February 26, 2004.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.state.va.us.

January 28, 2004 - 7 p.m. -- Open Meeting
Marshall Community Center, 4133 Rectortown Road, Marshall, Virginia. ♿

The first public meeting on the development of a bacteria TMDL for a segment of Carter Run Watershed located in Fauquier County. The comment period closes on February 28, 2004.

Contact: Katherine Bennett, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3896, FAX (703) 583-3841, e-mail kebennett@deq.state.va.us.

January 29, 2004 - 7 p.m. -- Open Meeting
Augusta County Government Center, 18 Government Center Lane, Board Room, Verona, Virginia. ♿

The final public meeting on the development of TMDLs to address impairments in the Middle River Watershed. The public comment period closes on March 1, 2004.

Contact: Robert Brent, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, e-mail rbrent@deq.state.va.us.

January 29, 2004 - 7 p.m. -- Open Meeting
Fairfield Area Library, 1001 North Laburnum Avenue, Richmond, Virginia. ♿

A meeting on the development of bacteria and pH TMDLs for White Oak Swamp Creek and Fourmile Creek in Henrico County. The public notice will be published in the Virginia Register on December 15, 2003, and the public comment period closes on February 22, 2004.

Contact: Mark Alling, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5021, FAX (804) 527-5106, e-mail msalling@deq.state.va.us.

BOARD OF FORESTRY

January 27, 2004 - 9 a.m. -- Open Meeting
Virginia Forestry Association, 3808 Augusta Avenue, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Donna S. Hoy, Administrative Staff Specialist, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, e-mail hoyd@dof.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 27, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

Calendar of Events

A meeting of an informal conference committee 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 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.state.va.us.

† **February 4, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Legislative/Regulatory committee to review and amend current regulations for the Board of Funeral Directors and Embalmers.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 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.

BOARD FOR GEOLOGY

† **April 20, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail oneal@dpor.state.va.us.

GEORGE MASON UNIVERSITY

January 28, 2004 - 9 a.m. -- Open Meeting
March 24, 2004 - 9 a.m. -- Open Meeting
George Mason University, Mason Hall, Fairfax, Virginia. ♿

A meeting of the Board of Visitors. The agenda will be published 10 days prior to the meeting.

Contact: Mary Roper, Secretary, pro tem, George Mason University, MSN 3A1, 4400 University Dr., Fairfax, VA 22030, telephone (703) 993-8703, (703) 993-8707/TTY ☎, e-mail mroper@gmu.edu.

STATE BOARD OF HEALTH

† **January 30, 2004 - 9 a.m.** -- Open Meeting
Omni Hotel, 12th and Cary Streets, Richmond, Virginia. ♿

A regular business and policy meeting of the board.

Contact: Margot Fritts, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7428, e-mail margot.fritts@vdh.virginia.gov.

DEPARTMENT OF HEALTH

State Emergency Medical Services Advisory Board

February 13, 2004 - 1 p.m. -- Open Meeting
The Place at Innsbrook, 4036 Cox Road, Richmond, Virginia. ♿

A regular meeting.

Contact: Gary R. Brown, Director, State Emergency Medical Services Advisory Board, Department of Health, 109 Governor Street, Suite UB-55, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail gary.brown@vdh.virginia.gov.

Sewage Handling and Disposal Appeal Review Board

February 25, 2004 - 10 a.m. -- Open Meeting
April 7, 2004 - 10 a.m. -- Open Meeting
Henrico County Health Department, 8600 Dixon Powers Drive, Human Services Board Room, Richmond, Virginia.

A meeting to hear appeals of the health department denials of septic tank permits.

Contact: Susan C. Sherertz, Secretary to the Board, Sewage Handling and Disposal Appeal Review Board, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7464, FAX (804) 864-7476, e-mail susan.sherertz@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

February 13, 2004 - 9 a.m. -- Open Meeting
† **April 16, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

A meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program (HPIP).

Contact: Donna P. Whitney, Intervention Program Manager, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.state.va.us.

DEPARTMENT OF HEALTH PROFESSIONS

February 6, 2004 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

February 27, 2004 -- 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 76-40, Regulations Governing Emergency Contact Information**. The purpose of the proposed action is to set

forth requirements for collection of emergency contact information.

371-6524, (804) 786-2376/TTY ☎, e-mail
bbj@doli.state.va.us.

Statutory Authority: § 54.1-2506.1 of the Code of Virginia.

Public comments may be submitted until February 27, 2004, to Robert A. Nebiker, Director, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

February 3, 2004 - 9 a.m. -- Open Meeting

March 2, 2004 - 9 a.m. -- Open Meeting

Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia. ♿ (Interpreter for the deaf provided upon request)

A Local Emergency Preparedness committee meeting as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, Hopewell Industrial Safety Council, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

State Building Code Technical Review Board

† **February 20, 2004 - 10 a.m.** -- Open Meeting

Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Review Board hears appeals concerning Virginia's building and fire codes and other department regulations. The board also considers interpretations of the codes as recommendations to the Board of Housing and Community Development for future amendment or repeal of provisions.

Contact: Vernon W. Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7150.

DEPARTMENT OF LABOR AND INDUSTRY

Migrant and Seasonal Farmworkers Board

January 28, 2004 - 10 a.m. -- Open Meeting

Virginia State University, Agriculture Building, Petersburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

Contact: Betty B. Jenkins, Board Administrator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2391, FAX (804)

STATE LIBRARY BOARD

March 15, 2004 - 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 - 9:15 a.m. - Public Library Development Committee
Publications and Educational Services Committee
Records Management Committee

9:30 - 10:30 a.m. - Archival and Information Services Committee

Collection Management Services Committee
Legislative and Finance Committee

10:30 a.m. - Library Board

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.

LONGWOOD UNIVERSITY

† **February 3, 2004 - 9:30 a.m.** -- Open Meeting

The Capital Club, 1051 East Cary Street, Room 400, Richmond, Virginia. ♿

A meeting of the Executive Committee to conduct routine committee business.

Contact: Jeanne Hayden, Longwood University, 201 High St., Farmville, VA 23909, telephone (434) 395-2004, e-mail jhayden@longwood.edu.

MARINE RESOURCES COMMISSION

January 27, 2004 - 9:30 a.m. -- Open Meeting

February 24, 2004 - 9:30 a.m. -- Open Meeting

March 23, 2004 - 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: Jane McCroskey, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail jmccroskey@mrc.state.va.us.

BOARD OF MEDICAL ASSISTANCE SERVICES

† **April 13, 2004 - 10 a.m.** -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. ♿

Calendar of Events

A routine quarterly meeting required by the BMAS bylaws.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail nancy.malczewski@dmas.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

February 27, 2004 - 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 consider amending regulations entitled **12 VAC 30-60, Standards Established and Methods Used to Assure High Quality Care**, and **12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to discontinue duplicative reimbursement for adult specialized care services in nursing facilities.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until February 27, 2004, to Paula Margolis, Reimbursement Analyst, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680, or e-mail vsimmons@dmas.state.va.us.

† **February 9, 2004 - 9 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia.

A meeting of the Pharmacy and Therapeutics Committee to review drug classes for PDL implementation in July.

Contact: Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail afegans@dmas.virginia.gov.

† **March 26, 2004** - 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 consider amending regulations entitled **12 VAC 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services**. The purpose of the proposed action is to reduce capital cost reimbursement levels for inpatient hospitals from 100% to 80%, found in 12 VAC 30-70-271.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 26, 2004, to Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680, or e-mail vsimmons@dmas.state.va.us.

† **March 30, 2004 - 4 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. ☎

A meeting of the Medicaid Physicians Advisory Committee to discuss physician issues in the Medicaid system.

Contact: Chris Schroeder, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail cschroed@dmas.state.va.us.

BOARD OF MEDICINE

February 4, 2004 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

February 13, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

An informal conference committee 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.

February 10, 2004 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

March 27, 2004 - 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 85-110, Regulations Governing the Practice of Licensed Acupuncturists**. The purpose of the proposed action is to license an applicant who graduated from an acupuncture program that had obtained candidacy status from the accrediting body and subsequently been accredited within three years of the applicant's graduation.

Statutory Authority: §§ 54.1-113 and 2.2-295.69 of the Code of Virginia.

Public comments may be submitted until March 27, 2004, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Profession, 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 13, 2004 - 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 increase fees by \$77 per licensee for a biennial renewal, with other associated fees increased by a like amount. This regulatory action will replace the emergency regulations in effect since July 15, 2003. The fee increase is necessary because of a substantial increase in the number of disciplinary proceedings related to implementation of HB1441 of the 2003 Session of the General Assembly.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until February 13, 2004, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

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

Advisory Board on Acupuncture

† **February 10, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

A meeting to consider proposed regulations governing ethical practice and other issues as may be presented on the agenda.

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.

Advisory Board on Athletic Training

† **February 12, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

A meeting to consider proposed regulations governing ethical practice and other issues as may be presented on the agenda.

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.

Advisory Board on Occupational Therapy

February 11, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

The board will consider issues related to the regulation of occupational therapy. 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.

Advisory Board on Physician Assistants

† **February 12, 2004 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

A meeting to consider proposed regulations governing ethical practice and other issues as may be presented on the agenda.

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.

Advisory Board on Radiologic Technology

† **February 10, 2004 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

A meeting to consider proposed regulations governing ethical practice and other issues as may be presented on the agenda.

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.

Advisory Board on Respiratory Care

† **February 11, 2004 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

Calendar of Events

A meeting to consider proposed regulations governing ethical practice and other issues as may be presented on the agenda.

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.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **January 29, 2004 - 1 p.m.** -- Open Meeting
† **January 30, 2004 - 9 a.m.** -- Open Meeting
Holiday Inn Central, 3207 North Boulevard, Richmond, Virginia.

A regular meeting.

Contact: Marlene A. Butler, Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services Board, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-7945, FAX (804) 371-2308, e-mail mbutler@dmhmrsas.state.va.us.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

February 5, 2004 - 9:30 a.m. -- Open Meeting
Henrico County Training Center, 7701 Parham Rd., Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the State and Local Advisory Team pursuant to §§ 2.2-5201 through 2.2-5203 of the Code of Virginia. A public comment period is scheduled.

Contact: Therese Wolf, Policy Specialist, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7522, e-mail therese.wolf@dss.virginia.gov.

DEPARTMENT OF MINES, MINERALS AND ENERGY

February 13, 2004 - 1 p.m. -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, 3405 Mountain Empire Road, Conference Room 116, Big Stone Gap, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting sponsored by the Division of Mined Land Reclamation to give interested persons an opportunity to be heard regarding the FY2004 Abandoned Mine Land Consolidated Grant Application to be submitted to the Federal Office of Surface Mining. This meeting is open to the public. Anyone needing special accommodations should contact the DMME within seven days prior to the meeting date.

Contact: Roger A. Williams, AML Services Manager, Department of Mines, Minerals and Energy, P.O. Drawer 900,

Big Stone Gap, VA 24219, telephone (276) 523-8208, FAX (276) 523-8247, (800) 828-1120/TTY ☎, e-mail Roger.Williams@dmme.virginia.gov.

Coal Surface Mining Reclamation Fund Advisory Board

† **January 27, 2004 - 10 a.m.** -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan Smith Building, 3405 Mountain Empire Road, U.S. Route 23 South, Big Stone Gap, Virginia. ♿ (Interpreter for the deaf provided upon request)

A review of minutes of the last meeting. The board will review the current Pool Bond Fund Financial Report, Review of Current Pool Bond Fund Liabilities Self Bonding, and Temporary Cessations. Public comments will not be received at this meeting. Special accommodations for the disabled will be made available at the public meeting or hearing on request. Anyone needing special accommodations should contact the Department of Mines, Minerals and Energy at least seven days prior to the meeting date.

Contact: Gerald D. Collins, Technical Services Manager, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8166, FAX (276) 523-8141, (800) 828-1120/TTY ☎, e-mail Gerald.Collins@dmme.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

February 11, 2004 - 8 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Medical Advisory Board.

Contact: J.C. Branche, R.N., Division Manager, Department of Motor Vehicles, 2300 West Broad Street, Richmond VA 23220, telephone (804) 497-7188, FAX (804) 367-1604, toll-free (800) 435-5137, (800) 272-9268/TTY ☎, e-mail dmvj3b@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

February 3, 2004 - 8 a.m. -- Open Meeting
March 2, 2004 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. ♿


April 6, 2004 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, MDR Payne Room, Richmond, Virginia. ♿


A 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, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

February 5, 2004 - 1 p.m. -- Open Meeting
† February 18, 2004 - Noon -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO Parlor, Richmond, Virginia. 

A meeting for staff and architects to update the Museum Expansion committee in closed session. Public comment will not be received.


Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


† February 18, 2004 - 9 a.m. -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO 2nd Floor Conference Room, Richmond, Virginia. 

The following committees will meet:

- Exhibitions - 9 a.m.
- Planning - 10:30 a.m.
- Education and Programs - 2 p.m.
- Communications and Marketing - 3:15 p.m.
- Legislative - 4:15 p.m.

Meeting for staff to update the committees. Public comment will not be received.


Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


† February 19, 2004 - 8:30 a.m. -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. 

The following committees will meet:


- Buildings and Grounds - 8:30 a.m.
- Collections - 9:30 a.m.
- Finance - 11 a.m.

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.

† February 19, 2004 - 12:30 p.m. -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. 


A meeting for staff to update the Board of Trustees. Some of the meeting will be held in closed session. 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 26, 2004 - 9 a.m. -- Open Meeting
January 28, 2004 - 9 a.m. -- Open Meeting
January 29, 2004 - 9 a.m. -- Open Meeting
March 22, 2004 - 9 a.m. -- Open Meeting
March 24, 2004 - 9 a.m. -- Open Meeting
March 25, 2004 - 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: Jay P. Douglas, M.S.M., C.S.A.C., 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.

January 27, 2004 - 9 a.m. -- Open Meeting
March 23, 2004 - 9 a.m. -- Open Meeting
 Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A general business meeting including committee reports, consideration of regulatory action, and disciplinary case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, 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 jay.douglas@dhp.state.va.us.

January 27, 2004 - 11 a.m. -- Public Hearing
 Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

February 13, 2004 - 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 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to increase certain fees for registered and licensed practical nurses to provide sufficient funding for an increased disciplinary caseload related to mandated reporting of misconduct and to offset the decrease in revenue related to Virginia's entry into the Nurse Licensure Compact in January 2005. The biennial renewal fee will increase from \$70 to \$95 and other fees associated with the renewal fee will increase accordingly.

Statutory Authority: §§ 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of the Code of Virginia.

Public comments may be submitted until February 13, 2004, to Jay Douglas, R.N., Executive Director, Board of Nursing, 6603 West Broad Street, Richmond, VA 23230.

Calendar of Events

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Profession, 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 27, 2004 - 11 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

February 27, 2004 - 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 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to clarify and update certain provisions affecting nursing education programs, the practice of nursing, and medication administration programs. Current regulations for nurse aides and nurse aide education programs found within 18 VAC 90-20 are being repromulgated in a new set of regulations, 18 VAC 90-25, Regulations Governing Certified Nurses.

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of the Code of Virginia.

Public comments may be submitted until February 27, 2004, to Jay Douglas, R.N., Executive Director, Board of Nursing, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Profession, 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 27, 2004 - 11 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

February 27, 2004 - 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 90-25, Regulations Governing Certified Nurse Aides**. The purpose of the proposed action is to clarify instructional expectations of the board for maintaining approval to provide nurse aide education, the process for reporting to the board for an interruption in the program. Regulations for reinstatement of nurse aide certification have been amended to include a prohibition against reinstatement following a finding of abuse, neglect or misappropriation of property and incorporated a board guidance document that provides for the possibility of reinstatement if the finding of neglect was based on a single occurrence. There are additional grounds added to the disciplinary provisions that address situations encountered in disciplinary cases before the board.

Statutory Authority: § 54.1-2400 and Article 4 (§ 54.1-3022 et seq.) of Chapter 30 of the Code of Virginia.

Public comments may be submitted until February 13, 2004, to Jay Douglas, R.N., Executive Director, Board of Nursing, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Profession, 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 2, 2004 - 9 a.m. -- Open Meeting

February 5, 2004 - 9 a.m. -- Open Meeting

February 10, 2004 - 9 a.m. -- Open Meeting

February 17, 2004 - 9 a.m. -- Open Meeting


February 25, 2004 - 9 a.m. -- Open Meeting

April 8, 2004 - 9 a.m. -- Open Meeting


† **April 13, 2004 - 9 a.m.** -- Open Meeting

† **April 19, 2004 - 9 a.m.** -- Open Meeting

† **April 20, 2004 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing will conduct informal conferences with licensees and/or certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., 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.

February 18, 2004 - 9 a.m. -- Open Meeting

† **April 21, 2004 - 9 a.m.** -- Open Meeting


Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail nursebd@dhp.state.va.us.

BOARD FOR OPTICIANS

April 9, 2004 - 9:30 a.m. -- Open Meeting

Department of Professional and Occupational Regulation
3600 West Broad Street, Richmond, Virginia. 

A general business meeting to consider regulatory and other issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail opticians@dpor.state.va.us.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

† **January 30, 2004 - 10 a.m.** -- Open Meeting
Location to be announced. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Retreat Follow-Up Committee to the VBPD Board. No public comment will be received at this meeting.

Contact: Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-9368, FAX (804) 786-1118, toll-free (800) 846-4464, e-mail smallsse@vbpd.state.va.us.

BOARD OF PHARMACY

February 27, 2004 - 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 clarify current law and regulation, alleviate problematic rules, and set more reasonable standards for reinstatement of a pharmacist license.

Statutory Authority: §§ 54.1-103 and 54.1-2400 and Chapters 33 (§ 54.1-3300) and 34 (§ 54.1-3400 et seq.) of the Code of Virginia.

Public comments may be submitted until February 27, 2004, to Elizabeth Scott Russell, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Profession, 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 PHYSICAL THERAPY

† **January 30, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.state.va.us.

† **January 30, 2004 - Noon** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to hear possible violations of the laws and regulations governing the practice of physical therapy.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.state.va.us.

POLYGRAPH EXAMINERS ADVISORY BOARD

† **March 4, 2004 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business. The board fully complies with the Americans with Disabilities Act.

Contact: Eric Olson, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail olson@dpor.state.va.us.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† **February 19, 2004 - 9:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to discuss legislative and regulatory recommendations regarding the regulation of the practice of photogrammetry. The discussion will be facilitated by DPOR staff and will include stakeholders involved in this issue.

Contact: Carol Mitchell, Director, Dispute Resolution, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0393, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail carol.mitchell@dpor.virginia.gov.

VIRGINIA PUBLIC BUILDINGS BOARD

January 28, 2004 - 10 a.m. -- Open Meeting
Department of Education, James Monroe Building, 18th Floor Conference Room, Richmond, Virginia. ♿

A meeting of the Master Plan Advisory Committee to wrap up input and recommendations regarding "education" within the Master Plan and to incorporate VPBB orientation feedback from November 19 and any additional input on larger issues. Following this meeting, all recommendations will go to the VPBB subcommittee(s) for further analysis and action.

Contact: Shannon Rainey, Research Assistant, Virginia Public Buildings Board, 202 N. 9th St., Suite 636, Richmond, VA 23219, telephone (804) 786-1201, FAX (804) 371-0038.

Calendar of Events

REAL ESTATE BOARD

† **February 5, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Room 453, Richmond,
Virginia. ☎

An informal fact-finding conference.

Contact: Karen W. O'Neal, Regulatory Programs
Coordinator, Real Estate Board, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-8537, FAX (804)
367-2475, (804) 367-9753/TTY ☎, e-mail
oneal@dpor.state.va.us.

March 25, 2004 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad Street, Richmond, Virginia. ☎

A meeting of the full board to review fair housing cases.

Contact: Karen W. O'Neal, Regulatory Programs
Coordinator, Real Estate Board, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-8537, FAX (804)
367-2475, (804) 367-9753/TTY ☎, e-mail
oneal@dpor.state.va.us.

March 25, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad Street, Richmond, Virginia. ☎

A regular meeting of the full board.

Contact: Karen W. O'Neal, Regulatory Programs
Coordinator, Real Estate Board, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-8537, FAX (804)
367-2475, (804) 367-9753/TTY ☎, e-mail
oneal@dpor.state.va.us.

VIRGINIA RESOURCES AUTHORITY

February 10, 2004 - 9 a.m. -- Open Meeting
Eighth and Main Building, 707 East Main Street, 2nd Floor,
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 any bonds; (vi) review the results of any bond sale; 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
bmcrae@vra.state.va.us.

SMALL BUSINESS ADVISORY BOARD

† **February 2, 2004 - 10 a.m.** -- Open Meeting
Department of Business Assistance, 707 East Main Street,
3rd Floor, Richmond, Virginia. ☎

A work session.

Contact: Barbara E. Anderson, Assistant to the Director,
EBS, Department of Business Assistance, 707 E. Main St.,
Suite 300, Richmond, VA 23219, telephone (804) 371-8230,
FAX (804) 371-2142, toll-free (866) 248-8814, e-mail
banderson@dba.state.va.us.

STATE BOARD OF SOCIAL SERVICES

† **January 29, 2004 - 9 a.m.** -- Open Meeting
Department of Social Services, 7 North 8th Street, Richmond,
Virginia. ☎

A business/legislative meeting of the board. Public
comment will begin at 1:30 p.m.

Contact: Pat Rengnerth, Board Liaison, Department of Social
Services, Office of Legislative and Regulatory Affairs, 7 N. 8th
St., Room 5214, Richmond, VA 23219, telephone (804) 726-
7905, FAX (804) 726-7906, (800) 828-1120/TTY ☎, e-mail
patricia.rengnerth@dss.virginia.gov.

* * * * *

March 26, 2004 - 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 amend regulations entitled **22 VAC 40-80, General Procedures and Information for Licensure**. The purpose of the proposed action is to amend the regulation to clarify and simplify some standards and to incorporate changes that have been made to the Code of Virginia since the last revision of this regulation. Many changes are the result of the recodification of Title 63.1 of the Code of Virginia that will become effective October 1, 2002. The Code of Virginia mandates that the Department of Social Services (department) license certain facilities that provide care to children and adults. Programmatic regulations are developed for these facilities. The current regulation contains general licensing requirements that are applicable to all licensed programs but are not included in the programmatic regulations. Previously, this regulation was promulgated jointly by the State Board of Social Services (board) and the Child Day-Care Council for all the department's licensed programs. However, the Child Day-Care Council desires to promulgate a separate regulation that applies only to child day centers (the only program for which they have regulatory responsibility). This regulation will continue to contain references to child day centers, however, because of the board's sole authority to regulate some procedures and activities that are applicable to child day centers. The goal of the amended regulation is to

provide clear and concise information and requirements for applicants, licensees, and licensing staff regarding the licensing process

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1733 and 63.2-1734 of the Code of Virginia

Contact: Kathryn Thomas, Program Development Consultant, Division of Licensing Programs, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132, or e-mail kathryn.thomas@dss.virginia.gov.

March 26, 2004 - 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 amend regulations entitled **22 VAC 40-141, Licensing Standards for Independent Foster Homes**. The purpose of the proposed action is to change the title to "Licensing Standards for Independent Foster Homes, amend the existing standards to clarify the intent of the regulation and incorporate changes made in the Code of Virginia since this regulation was adopted. Proposed amendments include allowing placement agreements; allowing children to remain in the independent foster home for up to six months; updating medical requirements; clarifying capacity; revising standards regarding physical restraint and time-out/separation; strengthening and updating safety requirements to better protect infants and young children; including language regarding respecting the diversity of children and their families; and the responsibilities of the licensee.

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Contact: Cynthia Carneal, Operations Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7140, FAX (804) 726-7132 or e-mail cynthia.carneal@dss.virginia.gov.

March 26, 2004 - 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 adopt regulations entitled **22 VAC 40-293, Locality Groupings**. The purpose of the proposed action is to establish criteria for local departments of social services to change Temporary Assistance for Needy Families (TANF) locality groupings. Locality groupings determine payments levels for recipients of TANF in each locality.

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

Contact: Mark L. Golden, TANF Program Manager, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356 or e-mail mark.golden@dss.virginia.gov.

March 26, 2004 - 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 amend regulations entitled **22 VAC 40-740, Locality Groupings**. The purpose of the proposed action is to update guidelines used by local departments of social services for investigating reports and protecting the health, safety, and welfare of the elderly and adults. Proposed changes are primarily technical in nature to make the regulation consistent with the Code of Virginia and current policy, update state agency names and delete outdated terminology.

Statutory Authority: §§ 63.2-217 and 63.2-1605 of the Code of Virginia.

Contact: Cindy Lee, Adult Services Program Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7535, FAX (804) 726-7895 or e-mail cindy.lee@dss.virginia.gov.

TREASURY BOARD


February 1, 2004 - 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 the Treasury intends to adopt regulations entitled **1 VAC 75-40, Unclaimed Property Administrative Review Process**. The purpose of the proposed action is to allow any person asserting ownership of unclaimed property or any holder of unclaimed property who is aggrieved by a decision of the administrator of the Uniform Disposition of Unclaimed Property Act the opportunity to file an application for an administrative review of the administrator's decision, all in compliance with § 55-210.27 of the Code of Virginia.

Statutory Authority: § 55-210-27 of the Code of Virginia.

Contact: Vicki D. Bridgeman, Director of Unclaimed Property, James Monroe Bldg., 101 N. 14th St., 4th Floor, Richmond, VA 23219, telephone (804) 225-3156, FAX (804) 786-4653 or e-mail vicki.bridgeman@trs.state.va.us.

DEPARTMENT OF VETERANS SERVICES

† **March 16, 2004 - 1 p.m.** -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street,
Richmond, Virginia. 

A meeting of the Joint Leadership Council.

Contact: Geneva M. Claybrook, Executive Services Manager, Department of Veterans Services, 4550 Shenandoah Ave., Roanoke, VA 24015, telephone (540) 857-6974, FAX (540) 857-6954, toll-free (800) 220-8387, e-mail gclaybrook@vvc1.us.

Calendar of Events

BOARD OF VETERINARY MEDICINE

February 4, 2004 - 9 a.m. -- Open Meeting
Hotel Roanoke and Conference Center, 110 Shenandoah Ave., Roanoke, Virginia. ☎

A Special Conference Committee to hold informal hearings (disciplinary hearings). These are public meetings, but public comment will not be received.

Contact: Terri Behr, Administrative Specialist, Board of Veterinary Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail terri.behr@dhp.state.va.us.

VIRGINIA MILITARY INSTITUTE

† **February 5, 2004 - 8 a.m.** -- Open Meeting
Virginia Military Institute, Smith Hall, Turman Room, Lexington, Virginia. ☎

A Board of Visitors retreat and committee meetings to discuss leadership development and external development.

Contact: Colonel Michael M. Strickler, Secretary, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (540) 464-7206.

† **February 6, 2004 - 9:45 a.m.** -- Open Meeting
Virginia Military Institute, Smith Hall, Turman Room, Lexington, Virginia. ☎

Board of Visitors committees will meet as follows: Military Affairs, Audit, Finance and Planning, and Academic Affairs. Academic department visits will be conducted. The full board will attend all committee meetings.

Contact: Colonel Michael M. Strickler, Secretary, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (540) 464-7206.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

March 30, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A regular meeting.

Contact: David E. Dick, Executive Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail wastemgt@dpor.state.va.us.

STATE WATER CONTROL BOARD

January 30, 2004 - 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 Water Control Board intends to amend regulations entitled **9 VAC 25-151, Virginia Pollutant Discharge Elimination System (VPDES)**

General Permit Regulation for Storm Water Discharges Associated with Industrial Activity. The purpose of the proposed action is to reissue the existing storm water industrial activity permit that expires on June 30, 2004. This general permit regulation governs the discharge of storm water from facilities with regulated industrial activities to surface waters.

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

Contact: Burt Tuxford, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4086, FAX (804) 698-4032 or e-mail brtuxford@deq.state.va.us.

January 30, 2004 - 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 Water Control Board intends to amend regulations entitled **9 VAC 25-180, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges From Construction Sites.** The purpose of the proposed action is to reissue the existing storm water construction general permit that expires on June 30, 2004. This general permit regulation governs the discharge of storm water from construction sites to surface waters.

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

Contact: Burt Tuxford, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4086, FAX (804) 698-4032 or e-mail brtuxford@deq.state.va.us.

January 30, 2004 - 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 Water Control Board intends to amend 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 to reissue a general discharge permit for discharges from nonmetallic mineral mining operations.

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


Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

February 12, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia. ☎

A public hearing to receive comments on the proposed addition of sites to the VPA permit for land application of sludge for Houff's Feed and Fertilizer Company in Weyers


Cave, Virginia. The public comment period closes on February 27, 2004.

Contact: Brandon Kiracofe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.state.va.us.


† **February 26, 2004 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A public meeting to receive comments on the State Water Control Board's notice of intent to consider amending the Policy for Nutrient Enriched Waters. The notice of intent will be published in the Virginia Register of Regulations on January 26, 2004, and the public comment period closes on March 12, 2004.


Contact: John M. Kennedy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4312, FAX (804) 698-4116, e-mail jmkennedy@deq.state.va.us.

† **January 28, 2004 - 10 a.m.** -- Open Meeting
† **February 24, 2004 - 10 a.m.** -- Open Meeting
† **March 24, 2004 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 


A meeting of the ad hoc committee established to assist in the development of water quality standards to protect the Chesapeake Bay from nutrient enrichment and sedimentation.


Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111, FAX (804) 698-4116, toll-free 800-592-5482 or (804) 698-4021/TTY 

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

January 27, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 


An informal fact-finding conference.

Contact: David E. Dick, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.state.va.us.


March 9, 2004 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507,


FAX (804) 367-6128, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.state.va.us.

THE COLLEGE OF WILLIAM AND MARY

† **January 26, 2004 - 9:30 a.m.** -- Open Meeting
Verizon Communications, 1515 North Courthouse Road, Arlington, Virginia  (Interpreter for the deaf provided upon request)


The Ad Hoc Committee will meet to review and discuss the Board of Visitors bylaws and meeting structure. The meeting is open to the public; there will be no opportunity for public comment.

Contact: William T. Walker, Jr., Associate Vice President for Public Affairs, The College of William and Mary, 312 Jamestown Rd., Williamsburg, VA 23185, telephone (757) 221-2624, FAX (757) 221-1021, e-mail wtwal2@wm.edu.

† **February 5, 2004 - 11 a.m.** -- Open Meeting
Blow Memorial Hall, 262 Richmond Road, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

Committees of the board will meet from 11 a.m. to 6 p.m. The meetings are open to the public; there will be no opportunity for public comment.

Contact: William T. Walker, Jr., Associate Vice President for Public Affairs, The College of William and Mary, 312 Jamestown Rd., Williamsburg, VA 23185, telephone (757) 221-2624, FAX (757) 221-1021, e-mail wtwal2@wm.edu.


† **February 6, 2004 - 8 a.m.** -- Open Meeting
Blow Memorial Hall, 262 Richmond Road, Williamsburg, Virginia  (Interpreter for the deaf provided upon request)

Committees of the board will meet from 8 a.m. to 11 a.m. The full board will meet from 11:15 a.m. to 1:15 p.m. to receive reports from the committees of the board, the administrations of Richard Bland College and the College of William and Mary, and will act on those resolutions presented by the administrations of both institutions. The meetings are open to the public, but there will be no opportunity for public comment.

Contact: William T. Walker, Jr., Associate Vice President for Public Affairs, The College of William and Mary, 312 Jamestown Rd., Williamsburg, VA 23185, telephone (757) 221-2624, FAX (757) 221-1021, e-mail wtwal2@wm.edu.

INDEPENDENT

STATE LOTTERY BOARD

January 28, 2004 - 9:30 a.m. -- Open Meeting
Virginia Lottery, 900 East Main Street, 13th Floor, Richmond, Virginia. 

A regular meeting. There will be an opportunity for public comment.

Calendar of Events

Contact: Frank S. Ferguson, Director, Legislative and Regulatory Affairs, State Lottery Department, 900 East Main Street, Richmond, VA 23219, telephone (804) 692-7901, FAX (804) 692-7603, e-mail fferguson@valottery.state.va.us.

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

† **January 29, 2004 - 10 a.m.** -- Open Meeting
Radisson Hotel, 301 West Franklin Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Disabilities Advisory Council. Public comment is welcome and will be received at the beginning of the meeting. For those needing accommodations, please contact Ms. Dee Vance by January 15, 2004.

Contact: Delicia Vance, Administrative Assistant, Virginia Office for Protection and Advocacy, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2064, FAX (804) 225-3221, toll-free (800) 552-3962, (804) 225-2042/TTY, e-mail vancedm@vopa.state.va.us.

VIRGINIA RETIREMENT SYSTEM

January 27, 2004 - Noon -- Open Meeting
February 10, 2004 - 1 p.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia.

A meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 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 lking@vrs.state.va.us.

February 4, 2004 - 11 a.m. -- Open Meeting
† **April 21, 2004 - 11 a.m.** -- Open Meeting
Bank of America Building, 1111 East Main Street, 4th Floor Conference Room, Richmond, Virginia.

The regular meeting of the Investment Advisory Committee of the VRS Board of Trustees. No public comment will be received at the meeting.

Contact: Phyllis Henderson, Investment Department Administrative Assistant, Virginia Retirement System, 1111 East Main Street, 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 4, 2004 - 2:30 p.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia.

Regular meetings of the following committees:
Administration and Personnel - 4 p.m.
Benefits and Actuarial - 2:30 p.m.
Audit and Compliance - 4 p.m.

Contact: LaShaunda B. King, Executive Assistant, 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 lking@vrs.state.va.us.

February 5, 2004 - 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: LaShaunda B. King, Executive Assistant, 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 lking@vrs.state.va.us.

March 24, 2004 - 3 p.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia.

A meeting of the Audit and Compliance Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main Street, Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY, e-mail lking@vrs.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 26

Barbers and Cosmetology, Board for Education, Department of
- Advisory Board on Teacher Education and Licensure
Environmental Quality, Department of
Nursing, Board of
† William and Mary, The College of

January 27

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Contractors, Board for
Forestry, Board of
Funeral Directors and Embalmers, Board of
Marine Resources Commission
† Mines, Minerals and Energy, Department of
- Coal Surface Mining Reclamation Fund Advisory Board
Nursing, Board of
Retirement System, Virginia
Waterworks and Wastewater Works Operators, Board for

January 28

Aging, Commonwealth Council on
Environmental Quality, Department of
George Mason University
Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board

Lottery Board, State
Nursing, Board of
Public Buildings Board, Virginia
† Water Control Board, State

January 29

Contractors, Board for
Environmental Quality, Department of
† Mental Health, Mental Retardation and Substance Abuse
Services Board, State
Nursing, Board of
† Protection and Advocacy, Virginia Office for
† Social Services, State Board of

January 30

† Accountancy, Board of
Counseling, Board of
† Health, State Board of
† Mental Health, Mental Retardation and Substance Abuse
Services Board, State
† People with Disabilities, Virginia Board for
† Physical Therapy, Board of

January 31

† Conservation and Recreation, Department of
- Cave Board

February 2

Branch Pilots, Board for
Nursing, Board of
† Small Business Advisory Board

February 3

Branch Pilots, Board for
Contractors, Board for
Hopewell Industrial Safety Council
† Longwood University
Museum of Fine Arts, Virginia

February 4

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Emergency Planning Committee, Local - Winchester
† Funeral Directors and Embalmers, Board of
Medicine, Board of
Retirement System, Virginia
Veterinary Medicine, Board of

February 5

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
† Contractors, Board for
Mental Health, Mental Retardation and Substance Abuse
Services, Department of
† Museum of Fine Arts, Virginia
Nursing, Board of
† Real Estate Board
Retirement System, Virginia
† Virginia Military Institute
† William and Mary, The College of

February 6

Accountancy, Board of
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Art and Architectural Review Board
† Dentistry, Board of
† Virginia Military Institute

† William and Mary, The College of

February 9

† Medical Assistance Services, Department of

February 10

Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
Contractors, Board for
† Medicine, Board of
- Advisory Board on Acupuncture
- Advisory Board on Radiologic Technology
Nursing, Board of
Resources Authority, Virginia
Retirement System, Virginia

February 11

Contractors, Board for
Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care
Motor Vehicles, Department of

February 12

Agriculture and Consumer Services, Department of
- Virginia Corn Board
† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Counseling, Board of
† Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants

February 13

Counseling, Board of
Health, Department of
- State Emergency Medical Services Advisory Board
Health Professions, Board of
Medicine, Board of
Mines, Minerals and Energy, Department of

February 17

† Chesapeake Bay Local Assistance Board
Nursing, Board of

February 18

Asbestos, Lead, and Home Inspectors, Virginia Board for
† Compensation Board
Contractors, Board for
† Museum of Fine Arts, Virginia
Nursing and Medicine, Joints Boards for

February 19

Audiology and Speech-Language Pathology, Board of
Design-Build/Construction Management Review Board
† Museum of Fine Arts, Virginia
† Professional and Occupational Regulation, Department of

February 20

† Housing and Community Development, Department of
- State Building Code Technical Review Board

February 24

Contractors, Board for
Marine Resources Commission
† Water Control Board, State

February 25

Education, Board of
Health, Department of
- Sewage Handling and Disposal Appeal Review Board
Nursing, Board of

Calendar of Events

February 26

Contractors, Board for
† Water Control Board, State

February 27

† Dentistry, Board of

March 2

Contractors, Board for
Hopewell Industrial Safety Council
Museum of Fine Arts, Virginia

March 4

† Polygraph Examiners Advisory Board

March 5

Art and Architectural Review Board
† Dentistry, Board of

March 9

† Agriculture and Consumer Services, Department of
- Virginia Cotton Board
Contractors, Board for
Waterworks and Wastewater Works Operators, Board for

March 11

† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

March 13

† Blind and Vision Impaired, Department for the
- Statewide Rehabilitation Council for the Blind and Vision
Impaired

March 15

Education, Board of
- Advisory Board on Teacher Education and Licensure
Library Board, State

March 16

Contractors, Board for
† Veterans Services, Department of

March 17

Community Colleges, State Board for

March 18

Community Colleges, State Board for
Design-Build/Construction Management Review Board

March 22

Nursing, Board of

March 23

Alzheimer's Disease and Related Disorders Commission
Marine Resources Commission
Nursing, Board of

March 24

Education, Board of
† Employment Dispute Resolution, Department of
George Mason University
Nursing, Board of
Retirement System, Virginia
† Water Control Board, State

March 25

Nursing, Board of
Real Estate Board

March 30

† Medical Assistance Services, Department of
Waste Management Facility Operators, Board for

April 1

Education, Board of

April 2

Art and Architectural Review Board
Education, Board of

April 6

Museum of Fine Arts, Virginia

April 7

Health, Department of
- Sewage Handling and Disposal Appeal Review Board

April 8

Nursing, Board of

April 9

Opticians, Board for

April 13

† Blind and Vision Impaired, Board for the
† Contractors, Board for
† Medical Assistance Services, Board of
† Nursing, Board of

April 15

† Design-Build/Construction Management Review Board

April 16

† Health Professions, Board of

April 19

Barbers and Cosmetology, Board for
† Education, Board of
- Advisory Board on Teacher Education and Licensure
† Nursing, Board of

April 20

† Geology, Board for
† Nursing, Board of

April 21

† Nursing and Medicine, Joint Boards for
† Retirement System, Virginia

PUBLIC HEARINGS

January 27

Nursing, Board of

February 6

Health Professions, Department of

February 10

† Medicine, Board of

February 12

Water Control Board, State

February 13

Counseling, Board of

February 19

Audiology and Speech Language Pathology, Board of