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Cumulative Table of VAC Sections Adopted, Amended, or Repealed

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2006 VAC Supplement includes final regulations published through *Virginia Register* Volume 22, Issue 6, dated January 9, 2006). 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 2. Agriculture			
2 VAC 5-20-10 through 2 VAC 5-20-40	Amended	22:11 VA.R. 1761-1764	3/10/06
2 VAC 5-20-30	Erratum	22:13 VA.R. 2153	--
2 VAC 5-210-10	Amended	22:24 VA.R. 3579	7/19/06
2 VAC 5-210-20	Amended	22:24 VA.R. 3579	7/19/06
2 VAC 5-210-30	Amended	22:24 VA.R. 3579	7/19/06
2 VAC 5-210-41	Added	22:24 VA.R. 3580	7/19/06
2 VAC 5-210-40	Repealed	22:24 VA.R. 3580	7/19/06
2 VAC 5-210-50	Repealed	22:24 VA.R. 3580	7/19/06
2 VAC 5-210-60	Amended	22:24 VA.R. 3581	7/19/06
2 VAC 5-330-30	Amended	22:24 VA.R. 3587	9/7/06
2 VAC 5-390-180	Amended	22:14 VA.R. 2201	2/27/06
Title 4. Conservation and Natural Resources			
4 VAC 5-36-50	Erratum	22:14 VA.R. 2216	--
4 VAC 5-40-10 through 4 VAC 5-40-350	Repealed	22:21 VA.R. 2801-2804	7/26/06
4 VAC 5-60-10 through 4 VAC 5-60-170	Repealed	22:21 VA.R. 2805-2807	7/26/06
4 VAC 10-30-10 through 4 VAC 10-30-350	Added	22:21 VA.R. 2801-2804	7/26/06
4 VAC 10-40-10 through 4 VAC 10-40-170	Added	22:21 VA.R. 2805-2807	7/26/06
4 VAC 15-20-65	Added	22:22 VA.R. 3089	7/1/06
4 VAC 15-20-130	Amended	22:19 VA.R. 2599	7/1/06
4 VAC 15-20-160	Amended	22:19 VA.R. 2600	7/1/06
4 VAC 15-40-30	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-40-200	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-40-285	Added	22:19 VA.R. 2601	7/1/06
4 VAC 15-50-71	Amended	22:19 VA.R. 2601	7/1/06
4 VAC 15-50-110	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-50-120	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-70-10	Amended	22:19 VA.R. 2602	7/1/06
4 VAC 15-70-60	Added	22:19 VA.R. 2602	7/1/06
4 VAC 15-90-22	Added	22:19 VA.R. 2603	7/1/06
4 VAC 15-90-70	Amended	22:19 VA.R. 2603	7/1/06
4 VAC 15-90-80	Amended	22:19 VA.R. 2604	7/1/06
4 VAC 15-90-80	Amended	22:22 VA.R. 3091	7/1/06
4 VAC 15-90-90	Amended	22:19 VA.R. 2605	7/1/06
4 VAC 15-90-91	Added	22:19 VA.R. 2605	7/1/06
4 VAC 15-90-100 through 4 VAC 15-90-121	Repealed	22:19 VA.R. 2608-2609	7/1/06
4 VAC 15-90-141	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-160	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-170	Repealed	22:19 VA.R. 2609	7/1/06
4 VAC 15-90-190 through 4 VAC 15-90-220	Repealed	22:19 VA.R. 2609-2610	7/1/06
4 VAC 15-90-291	Added	22:19 VA.R. 2610	7/1/06
4 VAC 15-90-292	Added	22:19 VA.R. 2610	7/1/06
4 VAC 15-110-20	Amended	22:19 VA.R. 2613	7/1/06
4 VAC 15-120-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-170-21	Added	22:19 VA.R. 2614	7/1/06
4 VAC 15-190-10	Amended	22:19 VA.R. 2614	7/1/06
4 VAC 15-200-10	Amended	22:19 VA.R. 2614	7/1/06

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4 VAC 15-210-10 and 4 VAC 15-210-20	Amended	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-21	Added	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-40	Repealed	22:19 VA.R. 2615	7/1/06
4 VAC 15-230-61	Added	22:19 VA.R. 2616	7/1/06
4 VAC 15-240-10	Amended	22:19 VA.R. 2616	7/1/06
4 VAC 15-240-20	Amended	22:19 VA.R. 2616	7/1/06
4 VAC 15-240-31	Amended	22:19 VA.R. 2616	7/1/06
4 VAC 15-320-25	Amended	22:19 VA.R. 2617	7/1/06
4 VAC 15-320-100	Amended	22:16 VA.R. 2370	5/17/06
4 VAC 15-330-50	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-330-140	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-330-160	Amended	22:19 VA.R. 2623	7/1/06
4 VAC 15-340-10	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-340-30	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-340-40	Amended	22:19 VA.R. 2624	7/1/06
4 VAC 15-360-10	Amended	22:19 VA.R. 2625	7/1/06
4 VAC 15-360-30	Amended	22:19 VA.R. 2626	7/1/06
4 VAC 15-360-70	Added	22:19 VA.R. 2626	7/1/06
4 VAC 20-20-20	Amended	22:10 VA.R. 1551	12/22/05
4 VAC 20-20-50	Amended	22:10 VA.R. 1551	12/22/05
4 VAC 20-20-50 emer	Amended	22:10 VA.R. 1682	12/28/05-1/27/06
4 VAC 20-20-50	Amended	22:12 VA.R. 2033	1/27/06
4 VAC 20-150-10 emer	Amended	22:20 VA.R. 2716	5/29/06-6/28/06
4 VAC 20-150-70 emer	Amended	22:20 VA.R. 2716	5/29/06-6/28/06
4 VAC 20-150-70	Amended	22:23 VA.R. 3277	6/28/06
4 VAC 20-252-30	Amended	22:23 VA.R. 3277	7/1/06
4 VAC 20-252-50	Amended	22:23 VA.R. 3278	7/1/06
4 VAC 20-252-55	Amended	22:15 VA.R. 2280	3/2/06
4 VAC 20-252-115	Added	22:23 VA.R. 3278	7/1/06
4 VAC 20-252-150	Amended	22:15 VA.R. 2280	3/2/06
4 VAC 20-450-30	Amended	22:20 VA.R. 2704	5/26/06
4 VAC 20-530-10	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-20	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-20 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-20	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-23	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-26	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-29	Repealed	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-30	Amended	22:12 VA.R. 2034	1/27/06
4 VAC 20-530-30 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-30	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-31	Added	22:12 VA.R. 2035	1/27/06
4 VAC 20-530-31 emer	Amended	22:14 VA.R. 2208	3/2/06-3/31/06
4 VAC 20-530-31	Amended	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-32 emer	Added	22:14 VA.R. 2209	3/2/06-3/31/06
4 VAC 20-530-32	Added	22:16 VA.R. 2371	3/31/06
4 VAC 20-530-35	Repealed	22:12 VA.R. 2035	1/27/06
4 VAC 20-560-20 emer	Amended	22:16 VA.R. 2387	3/30/06-4/28/06
4 VAC 20-560-20	Amended	22:19 VA.R. 2626	4/28/06
4 VAC 20-560-40 emer	Amended	22:16 VA.R. 2388	3/30/06-4/28/06
4 VAC 20-560-40	Amended	22:19 VA.R. 2627	4/28/06
4 VAC 20-560-50 emer	Amended	22:16 VA.R. 2388	3/30/06-4/28/06
4 VAC 20-560-50	Amended	22:19 VA.R. 2628	4/28/06
4 VAC 20-720-40	Amended	22:10 VA.R. 1552	1/1/06
4 VAC 20-720-40 emer	Amended	22:12 VA.R. 2043	2/1/06-2/28/06
4 VAC 20-720-50	Amended	22:10 VA.R. 1552	1/1/06

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4 VAC 20-720-50 emer	Amended	22:12 VA.R. 2043	2/1/06-2/28/06
4 VAC 20-720-70	Amended	22:10 VA.R. 1553	1/1/06
4 VAC 20-720-75	Amended	22:10 VA.R. 1553	1/1/06
4 VAC 20-900-10 through 4 VAC 20-900-30	Amended	22:23 VA.R. 3279-3280	7/1/06
4 VAC 20-900-25	Amended	22:10 VA.R. 1553	12/22/05
4 VAC 20-900-30	Amended	22:10 VA.R. 1554	12/22/05
4 VAC 20-910-45	Amended	22:10 VA.R. 1555	12/30/05
4 VAC 20-950-47 emer	Amended	22:10 VA.R. 1682	1/1/06-1/30/06
4 VAC 20-950-47	Amended	22:12 VA.R. 2035	2/1/06
4 VAC 20-950-48 emer	Amended	22:10 VA.R. 1683	1/1/06-1/30/06
4 VAC 20-950-48	Amended	22:12 VA.R. 2035	2/1/06
4 VAC 20-1040-20	Amended	22:10 VA.R. 1555	1/1/06
4 VAC 20-1100-10 through 4 VAC 20-1100-30	Added	22:19 VA.R. 2628	7/1/06
4 VAC 25-31 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-35 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-40 (Forms)	Amended	22:16 VA.R. 2389	--
4 VAC 25-130 (Forms)	Amended	22:16 VA.R. 2390	--
4 VAC 25-130-816.11	Amended	22:24 VA.R. 3587	9/6/06
4 VAC 25-130-816.64	Amended	22:24 VA.R. 3588	9/6/06
Title 6. Criminal Justice and Corrections			
6 VAC 20-120-80	Amended	22:20 VA.R. 2704	7/12/06
6 VAC 20-190-10 through 6 VAC 20-190-200	Repealed	22:10 VA.R. 1556-1559	2/22/06
6 VAC 20-210-10 through 6 VAC 20-210-110	Repealed	22:10 VA.R. 1561-1562	2/22/06
6 VAC 20-220-20 through 6 VAC 20-220-80	Repealed	22:10 VA.R. 1559-1560	2/22/06
6 VAC 20-240-10 through 6 VAC 20-240-120	Added	22:11 VA.R. 1764-1768	3/8/06
6 VAC 20-260-10 through 6 VAC 20-260-360 emer	Added	22:12 VA.R. 2044-2053	2/20/06-2/19/07
6 VAC 40-10-10 through 6 VAC 40-10-90	Added	22:24 VA.R. 3746-3747	10/25/06
6 VAC 40-20-10 through 6 VAC 40-20-200	Added	22:10 VA.R. 1556-1559	2/22/06
6 VAC 40-20 (Forms)	Added	22:16 VA.R. 2392	--
6 VAC 40-30-10 through 6 VAC 40-30-80	Added	22:10 VA.R. 1559-1560	2/22/06
6 VAC 40-30-10	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-30-20	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-30-50	Amended	22:21 VA.R. 2807	7/26/06
6 VAC 40-40-10 through 6 VAC 40-40-110	Added	22:10 VA.R. 1561-1562	2/22/06
6 VAC 40-50-10 through 6 VAC 40-50-80 emer	Added	22:23 VA.R. 3406-3407	7/1/06-6/30/07
Title 8. Education			
8 VAC 20-131-5	Added	22:24 VA.R. 3589	9/7/06
8 VAC 20-131-10	Amended	22:24 VA.R. 3590	9/7/06
8 VAC 20-131-20	Amended	22:24 VA.R. 3591	9/7/06
8 VAC 20-131-30	Amended	22:24 VA.R. 3591	9/7/06
8 VAC 20-131-40	Repealed	22:24 VA.R. 3592	9/7/06
8 VAC 20-131-50 through 8 VAC 20-131-110	Amended	22:24 VA.R. 3592-3598	9/7/06
8 VAC 20-131-140	Amended	22:24 VA.R. 3598	9/7/06
8 VAC 20-131-150	Amended	22:24 VA.R. 3598	9/7/06
8 VAC 20-131-160	Repealed	22:24 VA.R. 3599	9/7/06
8 VAC 20-131-170 through 8 VAC 20-131-210	Amended	22:24 VA.R. 3599-3600	9/7/06
8 VAC 20-131-240	Amended	22:24 VA.R. 3600	9/7/06
8 VAC 20-131-260 through 8 VAC 20-131-310	Amended	22:24 VA.R. 3601-3607	9/7/06
8 VAC 20-131-315	Added	22:24 VA.R. 3607	9/7/06
8 VAC 20-131-320	Repealed	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-325	Amended	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-330	Repealed	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-340	Amended	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-350	Added	22:24 VA.R. 3609	9/7/06
8 VAC 20-131-360	Added	22:24 VA.R. 3609	9/7/06
8 VAC 20-131, Appendix I	Repealed	22:24 VA.R. 3609	9/7/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-520-10	Repealed	22:21 VA.R. 2922	9/15/06
8 VAC 20-521-10 through 8 VAC 20-521-60	Added	22:21 VA.R. 2922-2924	9/15/06
8 VAC 20-660-10 through 8 VAC 20-660-40	Added	22:22 VA.R. 3092-3094	8/23/06
8 VAC 40-30	Repealed	22:23 VA.R. 3281	8/24/06
8 VAC 40-31-10 through 8 VAC 40-31-320	Added	22:23 VA.R. 3281-3298	8/24/06
Title 9. Environment			
9 VAC 5-20-203	Amended	22:23 VA.R. 3299	9/1/06
9 VAC 5-20-204	Amended	22:23 VA.R. 3299	9/1/06
9 VAC 5-50-250	Amended	22:23 VA.R. 3301	9/1/06
9 VAC 5-50-270	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-50-280	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-80-1100	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-80-1110	Amended	22:23 VA.R. 3303	9/1/06
9 VAC 5-80-1310	Repealed	22:23 VA.R. 3308	9/1/06
9 VAC 5-80-1605	Added	22:23 VA.R. 3309	9/1/06
9 VAC 5-80-1615	Added	22:23 VA.R. 3310	9/1/06
9 VAC 5-80-1625	Added	22:23 VA.R. 3321	9/1/06
9 VAC 5-80-1635	Added	22:23 VA.R. 3321	9/1/06
9 VAC 5-80-1645	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1655	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1665	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1675	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1685	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1695	Added	22:23 VA.R. 3323	9/1/06
9 VAC 5-80-1700	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1705	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1710	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1715	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1720	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1725	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1730	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1735	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1740	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1745	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1750	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1755	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1760	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1765	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1770	Repealed	22:23 VA.R. 3327	9/1/06
9 VAC 5-80-1775	Added	22:23 VA.R. 3327	9/1/06
9 VAC 5-80-1780	Repealed	22:23 VA.R. 3328	9/1/06
9 VAC 5-80-1785	Added	22:23 VA.R. 3328	9/1/06
9 VAC 5-80-1790	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1795	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1800	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1805	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1810	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1815	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1820	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1825	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1830	Repealed	22:23 VA.R. 3330	9/1/06
9 VAC 5-80-1835	Added	22:23 VA.R. 3330	9/1/06
9 VAC 5-80-1840	Repealed	22:23 VA.R. 3332	9/1/06
9 VAC 5-80-1845	Added	22:23 VA.R. 3332	9/1/06
9 VAC 5-80-1850	Repealed	22:23 VA.R. 3334	9/1/06
9 VAC 5-80-1855	Added	22:23 VA.R. 3334	9/1/06

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9 VAC 5-80-1860	Repealed	22:23 VA.R. 3335	9/1/06
9 VAC 5-80-1865	Added	22:23 VA.R. 3335	9/1/06
9 VAC 5-80-1870 through 9 VAC 5-80-1920	Repealed	22:23 VA.R. 3340	9/1/06
9 VAC 5-80-1925	Added	22:23 VA.R. 3340	9/1/06
9 VAC 5-80-1930	Repealed	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1935	Added	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1940	Repealed	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1945	Added	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1950	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1955	Added	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1960	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1965	Added	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1970	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1975	Added	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1985	Added	22:23 VA.R. 3343	9/1/06
9 VAC 5-80-1995	Added	22:23 VA.R. 3343	9/1/06
9 VAC 5-80-2000 through 9 VAC 5-80-2020	Amended	22:23 VA.R. 3343-3355	9/1/06
9 VAC 5-80-2040 through 9 VAC 5-80-2070	Amended	22:23 VA.R. 3355-3358	9/1/06
9 VAC 5-80-2090	Amended	22:23 VA.R. 3358	9/1/06
9 VAC 5-80-2091	Added	22:23 VA.R. 3358	9/1/06
9 VAC 5-80-2110 through 9 VAC 5-80-2140	Amended	22:23 VA.R. 3359-3362	9/1/06
9 VAC 5-80-2141 through 9 VAC 5-80-2143	Added	22:23 VA.R. 3362-3366	9/1/06
9 VAC 5-80-2144	Added	22:23 VA.R. 3367	9/1/06
9 VAC 5-80-2180	Amended	22:23 VA.R. 3372	9/1/06
9 VAC 5-80-2200 through 9 VAC 5-80-2240	Amended	22:23 VA.R. 3373-3375	9/1/06
9 VAC 20-60-18	Amended	22:23 VA.R. 3375	8/23/06
9 VAC 20-170-70	Amended	22:21 VA.R. 2808	7/26/06
9 VAC 25-31-10	Amended	22:24 VA.R. 3610	9/6/06
9 VAC 25-31-30	Amended	22:24 VA.R. 3619	9/6/06
9 VAC 25-31-80	Amended	22:24 VA.R. 3620	9/6/06
9 VAC 25-31-100	Amended	22:24 VA.R. 3620	9/6/06
9 VAC 25-31-165	Added	22:24 VA.R. 3637	9/6/06
9 VAC 25-31-220	Amended	22:24 VA.R. 3651	9/6/06
9 VAC 25-31-290	Amended	22:24 VA.R. 3656	9/6/06
9 VAC 25-31-770	Amended	22:24 VA.R. 3657	9/6/06
9 VAC 25-31-780	Amended	22:24 VA.R. 3658	9/6/06
9 VAC 25-31-790	Amended	22:24 VA.R. 3662	9/6/06
9 VAC 25-31-800	Amended	22:24 VA.R. 3667	9/6/06
9 VAC 25-31-840	Amended	22:24 VA.R. 3670	9/6/06
9 VAC 25-31-870	Amended	22:24 VA.R. 3677	9/6/06
9 VAC 25-194-40	Amended	22:16 VA.R. 2372	5/17/06
9 VAC 25-194-70	Amended	22:16 VA.R. 2372	5/17/06
9 VAC 25-260-310	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-260-410	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-260-530	Amended	22:11 VA.R. 1768	1/12/06
9 VAC 25-660-10	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-10 through 9 VAC 25-660-100	Amended	22:21 VA.R. 2809-2824	8/1/06
9 VAC 25-660-60	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-660-90	Erratum	22:23 VA.R. 3424	--
9 VAC 25-660-95	Added	22:21 VA.R. 2817	8/1/06
9 VAC 25-670-10	Erratum	22:12 VA.R. 2063	--
9 VAC 25-670-10 through 9 VAC 25-670-100	Amended	22:21 VA.R. 2824-2845	8/1/06
9 VAC 25-670-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-670-95	Added	22:21 VA.R. 2833	8/1/06
9 VAC 25-670-100	Erratum	22:12 VA.R. 2063	--

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9 VAC 25-680-10 through 9 VAC 25-680-100	Amended	22:21 VA.R. 2845-2866	8/1/06
9 VAC 25-680-70	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-70	Erratum	22:23 VA.R. 3424	--
9 VAC 25-680-80	Erratum	22:12 VA.R. 2063	--
9 VAC 25-680-90	Erratum	22:23 VA.R. 3424	--
9 VAC 25-680-95	Added	22:21 VA.R. 2854	8/1/06
9 VAC 25-680-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-10 through 9 VAC 25-690-100	Amended	22:21 VA.R. 2867-2889	8/1/06
9 VAC 25-690-30	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-50	Erratum	22:12 VA.R. 2063	--
9 VAC 25-690-70	Erratum	22:23 VA.R. 3424	--
9 VAC 25-690-95	Added	22:21 VA.R. 2876	8/1/06
9 VAC 25-690-100	Erratum	22:12 VA.R. 2063	--
9 VAC 25-720-60	Erratum	22:12 VA.R. 2064	--
9 VAC 25-720-110	Amended	22:16 VA.R. 2378	5/17/06
9 VAC 25-720-120	Erratum	22:12 VA.R. 2064	--
9 VAC 25-780-30	Amended	22:21 VA.R. 2889	7/26/06
Title 10. Finance and Financial Institutions			
10 VAC 5-160-10	Amended	22:18 VA.R. 2514	9/1/06
10 VAC 5-160-20	Amended	22:18 VA.R. 2514	9/1/06
10 VAC 5-160-30	Amended	22:18 VA.R. 2515	9/1/06
10 VAC 5-160-60	Added	22:18 VA.R. 2516	9/1/06
10 VAC 5-200-80	Amended	22:11 VA.R. 1769	3/1/06
Title 11. Gaming			
11 VAC 10-20-240	Amended	22:11 VA.R. 1771	3/8/06
11 VAC 10-20-260	Amended	22:15 VA.R. 2281	3/7/06
11 VAC 10-70-20	Amended	22:20 VA.R. 2705	5/19/06-9/4/06
11 VAC 10-70-30	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-40	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-50	Repealed	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-60	Amended	22:20 VA.R. 2706	5/19/06-9/4/06
11 VAC 10-70-70	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-80	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-90	Amended	22:20 VA.R. 2707	5/19/06-9/4/06
11 VAC 10-70-170	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-10	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-30	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 10-90-50	Amended	22:20 VA.R. 2708	5/19/06-9/4/06
11 VAC 15-22-10 through 11 VAC 15-22-80	Amended	22:22 VA.R. 3095-3104	8/9/06
11 VAC 15-22-110	Amended	22:22 VA.R. 3104	8/9/06
11 VAC 15-22-120	Amended	22:22 VA.R. 3105	8/9/06
11 VAC 15-31-10 through 11 VAC 15-31-60	Amended	22:22 VA.R. 3106-3112	8/9/06
Title 12. Health			
12 VAC 5-590-10	Amended	22:24 VA.R. 3677	9/6/06
12 VAC 5-590-370	Amended	22:15 VA.R. 2282	5/3/06
12 VAC 5-590-370	Amended	22:24 VA.R. 3683	9/6/06
12 VAC 5-590-400	Amended	22:15 VA.R. 2306	5/3/06
12 VAC 5-590-410	Amended	22:15 VA.R. 2307	5/3/06
12 VAC 5-590-410	Amended	22:24 VA.R. 3708	9/6/06
12 VAC 5-590-440	Amended	22:15 VA.R. 2310	5/3/06
12 VAC 5-590-440	Amended	22:24 VA.R. 3711	9/6/06
12 VAC 5-590-530	Amended	22:21 VA.R. 2890	7/26/06
12 VAC 5-590, Appendix B	Amended	22:15 VA.R. 2313	5/3/06
12 VAC 5-590, Appendix N	Amended	22:15 VA.R. 2313	5/3/06
12 VAC 5-590, Appendix N	Amended	22:24 VA.R. 3717	9/6/06

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12 VAC 5-590-540	Amended	22:15 VA.R. 2313	5/3/06
12 VAC 5-590-545	Amended	22:24 VA.R. 3712	9/6/06
12 VAC 5-590-820	Amended	22:24 VA.R. 3717	9/6/06
12 VAC 30-40-10	Amended	22:23 VA.R. 3376	8/23/06
12 VAC 30-40-290	Amended	22:23 VA.R. 3377	8/23/06
12 VAC 30-40-300	Amended	22:23 VA.R. 3379	8/23/06
12 VAC 30-40-360	Added	22:23 VA.R. 3385	8/23/06
12 VAC 30-50-10	Amended	22:16 VA.R. 2382	7/3/06
12 VAC 30-50-120	Amended	22:16 VA.R. 2383	7/3/06
12 VAC 30-50-140	Amended	22:16 VA.R. 2383	7/3/06
12 VAC 30-50-150	Amended	22:16 VA.R. 2385	7/3/06
12 VAC 30-50-190	Amended	22:23 VA.R. 3386	8/23/06
12 VAC 30-60-40	Amended	22:22 VA.R. 3112	8/9/06
12 VAC 30-60-350	Added	22:22 VA.R. 3112	8/9/06
12 VAC 30-70-291	Amended	22:23 VA.R. 3388	8/23/06
12 VAC 30-70-425	Amended	22:23 VA.R. 3389	8/23/06
12 VAC 30-70-426	Repealed	22:23 VA.R. 3390	8/23/06
12 VAC 30-80-20	Amended	22:23 VA.R. 3390	8/23/06
12 VAC 30-80-30	Amended	22:23 VA.R. 3393	8/23/06
12 VAC 30-80-40	Amended	22:14 VA.R. 2202	5/1/06
12 VAC 30-80-190	Amended	22:14 VA.R. 2204	5/1/06
12 VAC 30-80-190 emer	Amended	22:14 VA.R. 2209	5/1/06-4/30/07
12 VAC 30-90-19	Amended	22:23 VA.R. 3395	8/23/06
12 VAC 30-90-41	Amended	22:22 VA.R. 3112	8/9/06
12 VAC 30-110-710	Amended	22:23 VA.R. 3385	8/23/06
12 VAC 30-110-960	Amended	22:23 VA.R. 3385	8/23/06
12 VAC 30-120-10 through 12 VAC 30-120-60	Repealed	22:10 VA.R. 1638	2/22/06
12 VAC 30-120-211	Amended	22:19 VA.R. 2629	6/28/06
12 VAC 30-120-213	Amended	22:19 VA.R. 2632	6/28/06
12 VAC 30-120-215	Amended	22:19 VA.R. 2633	6/28/06
12 VAC 30-120-215	Amended	22:24 VA.R. 3718	9/6/06
12 VAC 30-120-217	Amended	22:19 VA.R. 2637	6/28/06
12 VAC 30-120-219	Amended	22:19 VA.R. 2639	6/28/06
12 VAC 30-120-221	Amended	22:19 VA.R. 2640	6/28/06
12 VAC 30-120-223	Amended	22:19 VA.R. 2641	6/28/06
12 VAC 30-120-225	Amended	22:19 VA.R. 2643	6/28/06
12 VAC 30-120-227	Amended	22:19 VA.R. 2647	6/28/06
12 VAC 30-120-229	Amended	22:19 VA.R. 2648	6/28/06
12 VAC 30-120-231	Amended	22:19 VA.R. 2649	6/28/06
12 VAC 30-120-233	Amended	22:19 VA.R. 2650	6/28/06
12 VAC 30-120-237	Amended	22:19 VA.R. 2653	6/28/06
12 VAC 30-120-241	Amended	22:19 VA.R. 2654	6/28/06
12 VAC 30-120-243	Repealed	22:19 VA.R. 2656	6/28/06
12 VAC 30-120-245	Amended	22:19 VA.R. 2658	6/28/06
12 VAC 30-120-247	Amended	22:19 VA.R. 2658	6/28/06
12 VAC 30-120-249	Amended	22:19 VA.R. 2660	6/28/06
12 VAC 30-120-380	Amended	22:23 VA.R. 3386	8/23/06
12 VAC 30-120-490 through 12 VAC 30-120-550	Repealed	22:10 VA.R. 1638	2/22/06
12 VAC 30-120-720	Amended	22:24 VA.R. 3721	9/6/06
12 VAC 30-120-900 through 12 VAC 30-120-980	Added	22:10 VA.R. 1638-1661	2/22/06
12 VAC 30-120-920	Amended	22:24 VA.R. 3724	9/6/06
12 VAC 30-141-200	Amended	22:23 VA.R. 3387	8/23/06
12 VAC 30-141-500	Amended	22:16 VA.R. 2385	7/3/06
12 VAC 30-141-500	Amended	22:23 VA.R. 3387	8/23/06
12 VAC 35-45-10	Amended	22:10 VA.R. 1684	12/30/05-12/29/06
12 VAC 35-45-70 emer	Amended	22:10 VA.R. 1685	12/30/05-12/29/06

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12 VAC 35-45-80 emer	Amended	22:10 VA.R. 1685	12/30/05-12/29/06
12 VAC 35-45-210 emer	Added	22:10 VA.R. 1686	12/30/05-12/29/06
12 VAC 35-105-20 emer	Amended	22:10 VA.R. 1686	12/30/05-12/29/06
12 VAC 35-105-30 emer	Amended	22:10 VA.R. 1693	12/30/05-12/29/06
12 VAC 35-105-590 emer	Amended	22:10 VA.R. 1693	12/30/05-12/29/06
12 VAC 35-105-660 emer	Amended	22:10 VA.R. 1694	12/30/05-12/29/06
Title 13. Housing			
13 VAC 5-51-132	Amended	22:20 VA.R 2709	7/12/06
13 VAC 5-63-40	Amended	22:20 VA.R 2710	7/12/06
13 VAC 5-63-480	Amended	22:20 VA.R 2712	7/12/06
13 VAC 6-20-10	Amended	22:10 VA.R. 1679	4/12/06
13 VAC 6-20-80	Amended	22:10 VA.R. 1680	4/12/06
13 VAC 6-20-120	Amended	22:10 VA.R. 1680	4/12/06
13 VAC 6-20-350	Amended	22:10 VA.R. 1680	4/12/06
Title 14. Insurance			
14 VAC 5-30-20	Erratum	22:24 VA.R. 3755	--
14 VAC 5-30-80	Erratum	22:24 VA.R. 3755	--
14 VAC 5-260 (Forms)	Amended	22:22 VA.R. 3140	--
14 VAC 5-260 (Forms)	Erratum	22:24 VA.R. 3756	--
Title 16. Labor and Employment			
16 VAC 25-90-1910.6	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.95	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.106	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.134	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.142	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.178	Amended	22:18 VA.R. 2517	6/15/06
16 VAC 25-90-1910.178	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.243	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.254	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.265	Amended	22:18 VA.R. 2518	6/15/06
16 VAC 25-90-1910.266	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.441	Repealed	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1000	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-90-1910.1000	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1001	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1017	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1018	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1020	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1025	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1026	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-90-1910.1027	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1028	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1029	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1030	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1043	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1045	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1047	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1048	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1050	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1051	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1052	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1450	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-100-1915.1000	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-100-1915.1001	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-100-1915.1026	Added	22:18 VA.R. 2519	6/15/06

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16 VAC 25-120-1917.1	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-130-1918.1	Amended	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926, Appendix B of Subpart R	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926, Appendix A to Subpart W	Adding	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.55	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926.60	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.62	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.754	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.754	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1002	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.1003	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-175-1926.1092	Repealed	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1101	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1126	Added	22:18 VA.R. 2519	6/15/06
16 VAC 25-175-1926.1127	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-190-1928, Appendix B to Subpart C	Added	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.51	Amended	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.52	Added	22:18 VA.R. 2520	6/15/06
16 VAC 25-190-1928.53, Appendix B to Subpart C	Added	22:18 VA.R. 2520	6/15/06
Title 17. Libraries and Cultural Resources			
17 VAC 10-30-10 through 17 VAC 10-30-160	Added	22:13 VA.R. 2132-2140	4/5/06
Title 18. Professional and Occupational Licensing			
18 VAC 5-21-10 through 18 VAC 5-21-40	Amended	22:22 VA.R. 3113-3118	8/9/06
18 VAC 5-21-20	Amended	22:22 VA.R. 3136	9/23/06
18 VAC 5-21-170	Amended	22:22 VA.R. 3118	8/9/06
18 VAC 30-20-80	Amended	22:14 VA.R. 2205	4/19/06
18 VAC 60-20-10	Amended	22:23 VA.R. 3397	8/23/06
18 VAC 60-20-20	Amended	22:23 VA.R. 3398	8/23/06
18 VAC 60-20-30	Amended	22:15 VA.R. 2320	5/3/06
18 VAC 60-20-71	Added	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-100	Amended	22:24 VA.R. 3749	10/23/06
18 VAC 60-20-105	Amended	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-106	Amended	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-210	Amended	22:23 VA.R. 3400	8/23/06
18 VAC 60-20-230	Amended	22:23 VA.R. 3400	8/23/06
18 VAC 65-20-60	Amended	22:21 VA.R. 2897	7/26/06
18 VAC 65-20-110	Amended	22:12 VA.R. 2036	3/22/06
18 VAC 65-20-500	Amended	22:21 VA.R. 2897	7/26/06
18 VAC 65-20-580	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-10	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40 (Forms)	Amended	22:21 VA.R. 2900	--
18 VAC 65-40-40	Amended	22:12 VA.R. 2036	3/22/06
18 VAC 65-40-40	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-90	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-110	Amended	22:21 VA.R. 2898	7/26/06
18 VAC 65-40-130	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-160	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-180	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-201	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-220	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-280	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-300	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-320	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-330	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 65-40-340	Amended	22:21 VA.R. 2899	7/26/06
18 VAC 70-20 (Forms)	Amended	22:21 VA.R. 2911	--

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 70-20-10	Amended	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-20	Repealed	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-30	Amended	22:21 VA.R. 2908	8/1/06
18 VAC 70-20-50 through 18 VAC 70-20-90	Amended	22:21 VA.R. 2908-2910	8/1/06
18 VAC 70-20-105	Added	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-110	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-140	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 70-20-150	Amended	22:21 VA.R. 2911	8/1/06
18 VAC 76-10-20	Amended	22:22 VA.R. 3120	6/19/06
18 VAC 76-10-65	Amended	22:22 VA.R. 3120	6/19/06
18 VAC 76-20-10	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-20	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-30	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-50	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-60	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-70	Added	22:23 VA.R. 3403	8/23/06
18 VAC 85-10-10 through 18 VAC 85-10-110	Erratum	22:15 VA.R. 2324	--
18 VAC 85-20-400 emer	Added	22:10 VA.R. 1695	12/21/05-12/20/06
18 VAC 85-20-410 emer	Added	22:10 VA.R. 1696	12/21/05-12/20/06
18 VAC 85-20-420 emer	Added	22:10 VA.R. 1696	12/21/05-12/20/06
18 VAC 85-130-10 through 18 VAC 85-130-170 emer	Added	22:10 VA.R. 1696-1700	12/21/05-12/20/06
18 VAC 90-20-30	Amended	22:12 VA.R. 2037	3/22/06
18 VAC 90-20-120	Amended	22:21 VA.R. 2915	7/26/06
18 VAC 90-25-80	Amended	22:12 VA.R. 2037	3/22/06
18 VAC 90-30-50	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 90-40-70	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 90-50-30	Amended	22:12 VA.R. 2038	3/22/06
18 VAC 95-20-130	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 105-20-5	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-10	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-15	Amended	22:20 VA.R. 2714	7/12/06
18 VAC 105-20-16	Amended	22:20 VA.R. 2715	7/12/06
18 VAC 105-20-20	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 110-20-20	Amended	22:15 VA.R. 2321	5/3/06
18 VAC 110-20-20	Erratum	22:16 VA.R. 2399	--
18 VAC 110-20-20	Amended	22:24 VA.R. 3726	9/6/06
18 VAC 110-20-70	Amended	22:24 VA.R. 3751	10/23/06
18 VAC 110-20-275	Amended	22:21 VA.R. 2926	9/10/06
18 VAC 110-20-630	Amended	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-640	Repealed	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-660	Repealed	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-670	Repealed	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-710	Amended	22:21 VA.R. 2927	9/10/06
18 VAC 110-30-10	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-15	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-15	Amended	22:15 VA.R. 2322	5/3/06
18 VAC 110-30-15	Erratum	22:16 VA.R. 2399	--
18 VAC 110-30-20	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-30	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-35	Repealed	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-40	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-50	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-80	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-110	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-130	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-150	Amended	22:10 VA.R. 1662	2/22/06

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-30-170 through 18 VAC 110-30-220	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-240	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-260	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-30-270	Amended	22:10 VA.R. 1662	2/22/06
18 VAC 110-50-10 through 18 VAC 110-50-150	Added	22:24 VA.R. 3729-3735	9/6/06
18 VAC 112-20-50	Amended	22:23 VA.R. 3404	8/23/06
18 VAC 112-20-65	Amended	22:23 VA.R. 3404	8/23/06
18 VAC 112-20-130	Amended	22:13 VA.R. 2141	4/5/06
18 VAC 112-20-150	Amended	22:13 VA.R. 2142	4/5/06
18 VAC 115-20-20	Amended	22:14 VA.R. 2206	4/19/06
18 VAC 115-20-106	Amended	22:12 VA.R. 2039	3/22/06
18 VAC 115-30-30	Amended	22:14 VA.R. 2206	4/19/06
18 VAC 115-40-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-50-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-50-96	Amended	22:12 VA.R. 2040	3/22/06
18 VAC 115-60-20	Amended	22:14 VA.R. 2207	4/19/06
18 VAC 115-60-116	Amended	22:12 VA.R. 2041	3/22/06
18 VAC 120-40-40	Amended	22:11 VA.R. 1779	4/23/06
18 VAC 120-40-50	Amended	22:11 VA.R. 1779	4/23/06
18 VAC 125-20-30	Amended	22:11 VA.R. 1772	3/8/06
18 VAC 125-30-20	Amended	22:11 VA.R. 1773	3/8/06
18 VAC 150-20-100	Amended	22:21 VA.R. 2916	7/26/06
Title 19. Public Safety			
19 VAC 30-20-40	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-80	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-205	Added	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-220	Amended	22:10 VA.R. 1663	3/1/06
19 VAC 30-20-250	Amended	22:10 VA.R. 1663	3/1/06
Title 20. Public Utilities and Telecommunications			
20 VAC 5-313-10 through 20 VAC 5-313-40	Added	22:11 VA.R. 1775-1777	1/5/06
Title 22. Social Services			
22 VAC 40-90-10 through 22 VAC 40-90-40	Amended	22:22 VA.R. 3121-3122	9/1/06
22 VAC 40-141-20	Amended	22:10 VA.R. 1664	2/22/06
22 VAC 40-141-30	Amended	22:10 VA.R. 1664	2/22/06
22 VAC 40-141-80 through 22 VAC 40-141-90	Amended	22:10 VA.R. 1664-1666	2/22/06
22 VAC 40-141-110 through 22 VAC 40-141-210	Amended	22:10 VA.R. 1666-1672	2/22/06
22 VAC 40-191-10	Amended	22:22 VA.R. 3123	9/1/06
22 VAC 40-191-20	Amended	22:22 VA.R. 3125	9/1/06
22 VAC 40-191-40 through 22 VAC 40-191-70	Amended	22:22 VA.R. 3126-3131	9/1/06
22 VAC 40-191-90	Amended	22:22 VA.R. 3131	9/1/06
22 VAC 40-191-100	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-120	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-130	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-191-150	Amended	22:22 VA.R. 3132	9/1/06
22 VAC 40-330-10 through 22 VAC 40-330-30	Repealed	22:22 VA.R. 3136-3138	9/23/06
22 VAC 40-340-10	Repealed	22:22 VA.R. 3138	9/23/06
22 VAC 40-340-20	Repealed	22:22 VA.R. 3138	9/23/06
Title 24. Transportation and Motor Vehicles			
24 VAC 30-41 (Forms)	Amended	22:21 VA.R. 2921	--
24 VAC 30-41-220	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-230	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-290	Amended	22:21 VA.R. 2917	7/26/06
24 VAC 30-41-300	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-310	Amended	22:21 VA.R. 2918	7/26/06
24 VAC 30-41-320	Amended	22:21 VA.R. 2918	7/26/06

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
24 VAC 30-41-430	Amended	22:21 VA.R. 2919	7/26/06
24 VAC 30-41-520	Amended	22:21 VA.R. 2920	7/26/06
24 VAC 30-41-650	Amended	22:21 VA.R. 2920	7/26/06
24 VAC 30-121-10 through 24 VAC 30-121-40	Added	22:10 VA.R. 1672-1676	2/22/06
24 VAC 30-400-10 through 24 VAC 30-400-40	Repealed	22:13 VA.R. 2142	2/14/06
24 VAC 30-401-10 through 24 VAC 30-401-40	Added	22:13 VA.R. 2142-2143	2/14/06
24 VAC 30-550	Repealed	22:24 VA.R. 3736	9/6/06
24 VAC 30-551-10 through 24 VAC 30-551-100	Added	22:24 VA.R. 3736-3744	9/6/06
24 VAC 30-600	Repealed	22:24 VA.R. 3736	9/6/06

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 1. ADMINISTRATION

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Human Resource Management intends to consider promulgating regulations entitled **1 VAC 55-30, Commonwealth of Virginia Long-Term Care Program**. The purpose of the proposed action is to establish regulations used by the Department of Human Resource Management in the administration of the long-term care plan for state employees, retirees, terminated vested participants of the Virginia System, and employees and retirees of local governments. The regulation will define which groups of employees, former employees and their dependents are eligible for the long-term care program sponsored by the Department of Human Resource Management. Additionally, the regulation will clarify the different insurance classifications and the processes that the eligible participants within each classification must go through in order to secure coverage.

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

Statutory Authority: §§ 2.2-1207 and 2.2-1208 of the Code of Virginia.

Public comments may be submitted until September 20, 2006.

Contact: Charles Reed, Department of Human Resource Management, 101 N. 14th St., Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-0231 or e-mail charles.reed@dhrm.virginia.gov.

VA.R. Doc. No. R06-316; Filed August 9, 2006, 2:25 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF FORENSIC SCIENCE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Forensic Science intends to consider promulgating regulations entitled **6 VAC 40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**. The purpose of the proposed action is to establish the process of approval, approval authority, criteria for approval, notification methods,

fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department in accordance with § 19.2-188.1 B of the Code of Virginia, which became effective July 1, 2006. Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 of the Code of Virginia regarding whether any plant material, the identity of which is at issue, is marijuana.

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

Statutory Authority: §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail katya.herndon@dfs.virginia.gov.

VA.R. Doc. No. R06-284; Filed June 29, 2006, 2:58 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to provide the Virginia Department of Health with the authority to collect fees from all applicants for a permit, permit modification, or permit reissuance, for the land application, distribution or marketing of treated sewage sludge (biosolids) in accordance with the regulations.

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

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

Public comments may be submitted until September 8, 2006.

Contact: C. M. Sawyer, Division Director, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475 or e-mail cal.sawyer@vdh.virginia.gov.

VA.R. Doc. No. R06-292; Filed July 14, 2006, 9:59 a.m.

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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 begin a comprehensive review of the board's regulations, seeking input from the board's regulants and the public in its deliberations, and seeking clarity and improvements that will be reasonable, prudent and will not impose an unnecessary burden on its regulants and the public.

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 September 20, 2006.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174 or e-mail boa@boa.virginia.gov.

VA.R. Doc. No. R06-308; Filed August 2, 2006, 10:36 a.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending 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 amend existing regulations regarding supervision and residency specifications for the purpose of updating these requirements to meet the intended objectives of the board, which are to address what constitutes an approved supervisor, remove contradictory language regarding face-to-face supervision, and require registration of supervisors regardless of the exemption/nonexempt setting. The board also intends to amend existing regulations regarding prerequisites for licensure by endorsement to clarify existing requirements. Regulations must be consistent and fair in requirement and usage regardless of whether an applicant is applying for licensure through examination or endorsement.

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

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone: 804-662-9133, FAX: 804-662-9943, or e-mail evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R06-287; Filed June 30, 2006, 8:40 a.m.

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to comply with a statutory mandate as set forth in Chapter 858 of the 2006 Acts of Assembly. In its proposed regulatory action, the board intends to establish the education and training required for a dental hygienist to demonstrate competency in the administration of local anesthesia and nitrous oxide under the direction of a licensed dentist.

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

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

Public comments may be submitted until 5 p.m. on September 6, 2006.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943) or e mail sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R06-295; Filed July 18, 2006, 3:31 p.m.

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic**. The purpose of the proposed action is to waive all or part of the continuing education requirements for doctors who restrict their practices to serving as medical examiners.

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

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

Notices of Intended Regulatory Action

Public comments may be submitted until 5 p.m. on September 20, 2006.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R06-303; Filed July 27, 2006, 1:41 p.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to address inadequacy in regulations for nursing programs and clarify other requirements.

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

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

Public comments may be submitted until 5 p.m. on September 6, 2006.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R06-307; Filed July 28, 2006, 2:26 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-25, Regulations Governing Certified Nurse Aides**. The purpose of the proposed action is to clarify certain requirements and address issues and problems that have arisen with the Nurse Aide Registry.

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

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

Public comments may be submitted until 5 p.m. on September 6, 2006.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R06-306; Filed July 28, 2006, 2:22 p.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to make technical changes to clarify the continuing education rules and consider some requirements for face-to-face or interactive hours.

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

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 23, 2006.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R06-286; Filed June 30, 2006, 8:41 a.m.



PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

REGISTRAR'S NOTICE: The Virginia Racing Commission is exempt from the Administrative Process Act pursuant to subdivision A 18 of § 2.2-4002 of the Code of Virginia when acting by and through its duly appointed stewards or in matters related to any specific race meeting.

The Virginia Racing Commission adopted the regulations to apply to the live harness race meeting scheduled to begin on September 4, 2006.

Titles of Regulations: **11 VAC 10-70. Stewards (amending 11 VAC 10-70-20, 11 VAC 10-70-30, 11 VAC 10-70-40, 11 VAC 10-70-60 through 11 VAC 10-70-90 and 11 VAC 10-70-170; repealing 11 VAC 10-70-50).**

11 VAC 10-90. Appeals to the Commission (amending 11 VAC 10-90-10, 11 VAC 10-90-30, and 11 VAC 10-90-50).

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

Public Hearing Date: N/A - Public comments may be submitted until 5 p.m. on October 20, 2006.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail david.lermond@vrc.virginia.gov.

Summary:

The amendments clarify the authority of the stewards appointed by the Virginia Racing Commission to enforce and interpret the commission's regulations. The definition of "participant" has been added, which provides that certain individuals associated with a horse that is entered to run in Virginia shall be considered as participants and come under the jurisdiction of the commission. Additionally, the amendments provide the commission with the authority to take disciplinary actions through stewards or at a meeting at which a quorum is present and clarify that such disciplinary actions must be determined by a preponderance of the evidence. These amendments are made to conform the regulation to Chapter 700 of the 2005 Acts of Assembly.

11 VAC 10-70-20. Appointment.

~~Three~~ The commission shall appoint stewards, all of whom shall be employees of the commission, ~~shall be appointed for each race meeting licensed by the commission. The commission, in its discretion, may appoint one or more stewards for the satellite facilities licensed by the commission. To qualify for appointment as a steward, the appointee shall meet the experience, education and examination requirements necessary to be accredited by the Racing Officials Accreditation Program administered by the~~

Universities of Arizona and Louisville, or in the case of harness racing, be licensed as a judge by the United States Trotting Association.

11 VAC 10-70-30. Senior Commonwealth Steward.

One of the ~~three~~ stewards employed by the commission ~~for each race meeting~~ shall be designated as the Senior Commonwealth Steward. The Senior Commonwealth Steward shall preside at all hearings conducted by the stewards ~~at the race meetings that do not pertain to the operation of the satellite wagering facilities. In matters pertaining to the operation of satellite facilities, a single Any steward shall preside at all~~ may conduct hearings *pertaining to the operation of satellite wagering facilities.*

11 VAC 10-70-40. General powers and authority.

~~The A steward or the stewards for each race meeting or satellite facility licensed by the commission shall be responsible to the commission for the conduct of the race meeting or for the operation of the satellite facilities in accordance with the Code of Virginia and the regulations of the commission. The steward or stewards, shall have authority over all holders of permits, and shall have authority to resolve conflicts or disputes that are related to the conduct of racing or operation of the satellite facilities in accordance with the Code of Virginia and the regulations of the commission.~~

11 VAC 10-70-50. General powers. (Repealed.)

~~The A steward or the stewards shall exercise immediate supervision, control and regulation of horse racing at each race meeting or and at a all satellite facility facilities licensed by the commission and shall be responsible to the the commission. The powers of the stewards shall include:~~

- 1. Reviewing the conduct of all racing officials, track management, permitted personnel, other persons responsible for the conduct of racing and simulcasting, and patrons as necessary, to ensure compliance with these regulations and the Code of Virginia;*
- 2. Determining all questions, disputes, protests, complaints, or and objections concerning live horse racing which arise during a race meeting or at a satellite facility and simulcast horse racing and enforcing their rulings;*
- ~~2-~~ *3. Taking disciplinary action against any holder of a permit or participant found violating federal laws, state laws, local ordinances or regulations of the commission;*
- ~~3-~~ *4. Reviewing applications for permits and either granting or denying the permits to participate in horse racing at race meetings or satellite facilities. Nothing in these regulations shall be construed to prohibit the granting of a permit with such conditions as the stewards may deem appropriate;*

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~~4.~~ 5. Enforcing the regulations of the commission in all matters pertaining to horse racing ~~or and~~ satellite facilities;

~~5.~~ 6. Issuing rulings pertaining to the conduct of horse racing ~~or and~~ satellite facilities;

~~6.~~ 7. Varying any arrangement for the conduct of a race meeting including but not limited to postponing a race or races, canceling a race, or declaring a race "no contest";

~~7.~~ 8. Requesting assistance from other commission employees, *law-enforcement officials*, racing officials, members of *the horse-racing industry* or the licensee's security service in the investigation of possible *statutory or rule infractions violations*;

~~8.~~ 9. Conducting hearings on all questions, disputes, protests, complaints, or objections concerning racing matters ~~or and~~ satellite facilities; ~~and~~

~~9.~~ 10. Substituting another qualified person where any racing official is unable to perform his duties.;

11. *Issuing subpoenas for the attendance of witnesses to appear before them, administering oaths and compelling the production of any of the books, documents, records, or memoranda of any licensee or permit holder. In addition, the stewards may issue subpoenas to compel the production of an annual balance sheet and operating statement of any licensee or permit holder and may require the production of any contract to which such person is or may be a party. The stewards may also issue subpoenas to compel production of records or other documents or relevant things and the testimony of witnesses whenever, in their judgment, it is necessary to do so for the effectual discharge of their duties;*

12. *Placing horses on the Stewards' List for unsatisfactory performance; and*

13. *Interpreting the regulations and deciding all questions of racing not specifically covered by the regulations.*

11 VAC 10-70-60. Duties.

In addition to the duties necessary and pertinent to the general supervision, control and regulation of race meetings or satellite facilities, the stewards shall have the following specific duties:

1. Causing investigations to be made in all instances of possible violations of federal laws, state laws, local ordinances and regulations of the commission;

2. Being present within the enclosure at a race meeting no less than 90 minutes before post time of the first race and remaining until 15 minutes after the last race is declared "official";

3. Being present in the stewards' stand during the running of all races at race meetings;

4. Administering examinations for applicants applying for permits as trainers, jockeys, apprentice jockeys or farriers to determine the applicants' qualifications for the permits;

5. Determining the identification of horses;

6. Determining eligibility of horses for races restricted to Virginia breeds;

7. Determining eligibility of a horse or person to participate in a race;

8. Supervising the taking of entries and the drawing of post positions;

9. Approving or denying requests for horses to be excused from racing;

10. Locking the totalizator at the start of the race so that no more pari-mutuel tickets may be sold;

11. Determining alleged violations of these regulations in the running of any race through their own observation or by patrol judges and posting the "inquiry" sign ~~on the infield results board~~ when there are alleged violations;

12. Determining alleged violations of these regulations in the running of any race brought to their attention by any participant and posting the "objection" sign ~~on the infield results board~~ when there are alleged violations;

13. Causing the "official" sign to be posted ~~on the infield results board~~ after determining the official order of finish for the purposes of the pari-mutuel payout;

14. Reviewing the video tapes of the previous day's races and determining the jockeys ~~whom the stewards feel~~ *who* should review the films for instructional purposes;

15. Making periodic inspections of the facilities within the enclosure at race meetings, including but not limited to the stable area, paddock, and jockeys' room;

16. Reporting their findings of their periodic inspections of the facilities to the commission;

17. Filing with the commission a written daily report at *during* race meetings ~~which~~. *Such report* shall contain a detailed written record of all questions, disputes, protests, complaints or objections brought to the attention of the stewards, a summary of any interviews relating to these actions, copies of any rulings issued by the stewards, and any emergency actions taken and the basis for the actions;

18. Submitting to the commission after the conclusion of the race meeting a written report setting out their findings on the conduct of the race meeting, the condition of the facilities and any recommendation for improvement that they deem appropriate; and

19. ~~Observing the conduct of simulcast horse racing at satellite facilities.~~ *Imposing any of the following penalties on a licensee, participant or permit holder for a violation of these regulations:*

a. Issue a reprimand;

b. Assess a fine;

c. Require forfeiture or redistribution of a purse or award;

d. Place a permit holder or participant on probation with or without conditions;

e. Suspend a permit holder or participant with or without conditions;

f. Revoke a permit;

g. Exclude from the grounds under the jurisdiction of the commission; or

h. Any combination of the above.

11 VAC 10-70-70. Objections and protests.

The stewards receive and hear all objections lodged by *trainers, owners, jockeys or drivers* after the completion of a race, and all protests lodged by holders of a permit before or after the completion of a race under the following provisions:

1. The stewards shall keep a written record of all objections and protests;
2. Jockeys shall indicate their intention of lodging an objection in a manner prescribed by the stewards;
3. Drivers shall indicate their intention of lodging an objection immediately after the race by reporting to the patrol judge;
4. If the placement of the starting gate or line is in error, a protest must be made prior to the time that the first horse enters the starting gate or line;
5. Protests, other than those arising out of the running of a race, shall be in writing, clearly stating the nature of the protest, signed by the holder of a permit making the protest, and filed with the stewards at least one hour before post time of the race out of which the protest arises;
6. Protests, arising out of the running of a race, must be made to the stewards as soon as possible after the completion of the race but before the race is declared official ~~and~~. The stewards may call and examine any witness *regarding the protest*;
7. Until a final determination is made on an objection or protest and any administrative remedies and all appeals thereof are exhausted, the purse money for the race shall be retained by the horsemen's bookkeeper or licensee and paid only upon the approval of the stewards or commission; and
8. A *participant* or holder of a permit may not withdraw a protest without the permission of the stewards.

11 VAC 10-70-80. Period of authority.

The period of authority *for each steward* shall ~~commence at a period of time prior to the race meeting and shall terminate at a period of time after the end of the race meeting as designated by the commission. The period of authority for the steward or stewards at satellite facilities shall commence and terminate at a period of time designated by the~~ be established by contractual arrangement between each steward and the commission.

11 VAC 10-70-90. Appointment of substitute.

If any steward is absent at the time of the running of the race or is otherwise unable to perform his duties, the other ~~two~~

stewards shall agree on the appointment of a substitute to act for the absent steward. If a substitute is appointed, the commission shall be notified immediately followed by a written report, stating the name of the ~~deputy~~ *substitute* steward, the reason for his appointment, and the races over which the substitute officiated.

11 VAC 10-70-170. Orders following disciplinary actions.

Any disciplinary action taken by the steward or stewards or by the commission shall be provided in writing to the ~~holder of a permit person being disciplined~~, setting forth the federal or state law, local ordinance or regulation that was violated, the date of the violation, the factual or procedural basis of the finding, the extent of the disciplinary action taken, and the date when the disciplinary action is to take effect. The order following disciplinary action may be hand delivered or mailed to the ~~holder of the permit person being disciplined~~, but in either case, *the mode of delivery* shall be duly ~~acknowledged certified~~ by the ~~holder of a permit sender~~. *The sender shall use reasonable efforts to obtain acknowledgement of receipt by the recipient.*

11 VAC 10-90-10. Generally Request for review; stay.

A holder of ~~or applicant for~~ a *license or permit or a participant* who wishes to contest a denial of a permit or disciplinary action of the stewards may request a review by the commission. A *denial of a license or permit* or disciplinary action taken by the steward or stewards shall not be stayed or superseded by the filing of a request for a review unless the commission so orders. *At the written request of an aggrieved party, a stay in the implementation of a disciplinary action* may be granted by the ~~executive secretary chairman~~ of the commission or a commissioner designated by the chairman. *Such request shall be acted upon within 72 hours of the delivery of the written request to the executive secretary. Any granting or denial of a stay shall be effective until the next regularly scheduled meeting of the commission at which time the granting or denial or further stay shall be decided by the commission.*

11 VAC 10-90-30. Content of request.

The request shall state:

1. The disciplinary action ~~of or denial of a permit~~ by the steward or stewards being contested;
2. The basis for the request; and
3. Any additional information the ~~applicant for or holder of a licensee, permit holder or participant~~ may wish to include concerning the request.

11 VAC 10-90-50. Procedures for conducting a commission review.

Reviews of stewards' decisions involving the outcome of a race or riding/driving infractions shall be conducted on the record of the stewards' proceedings. Riding/driving infractions are defined as any violations of the commission's regulations while riding or driving a horse in any race.

All other reviews will be de novo.

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The commission shall conduct its review within 45 days of receipt of a request for a review of a denial of a permit or a disciplinary action taken by the steward or stewards. The following provisions shall apply to reviews by the commission:

1. If any commissioner determines that he has a conflict of interest or cannot accord a fair and impartial review, that commissioner shall not take part in the review.
2. The commissioners, in their discretion, may appoint an independent hearing officer to preside at the review and prepare a ~~proposed~~ *recommended* written decision for their consideration. *The commission, at its discretion, may accept the recommendation in its entirety, amend it or reject it.*
3. Unless the parties otherwise agree, a notice setting the date, time and location of the review shall be sent to the ~~holder of or applicant for a permit~~ *person requesting the review and all other owners, trainers, jockeys and drivers who may be affected by the resulting decision* at least 10 days before the date set for the review.
 - a. *The written notice shall describe the charges, basis thereof and possible penalties.*
 - b. *The written notice shall inform each party of the right to counsel, the right to present a defense including witnesses for that purpose and the right to cross-examine any witness.*
4. The proceedings shall be open to the public.
 - a. The proceedings shall be electronically recorded.
 - b. A court reporter may be used. The court reporter shall be paid by the person who requests him. If the ~~applicant for or holder of a permit~~ *person requesting the review* elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.
5. The proceedings shall include the following:
 - a. The commission ~~or hearing officer~~ may issue subpoenas to compel the attendance of witnesses or ~~for the production of reports, books, papers, registration documents or any other materials~~ *and other relevant evidence* it deems appropriate. However, nothing in this section shall be taken to authorize discovery proceedings;
 - b. Oaths shall be administered to all witnesses;
 - c. The commission may examine any witnesses;
 - d. Written notice shall be given to the holder of or applicant for a permit in a reasonable time prior to the review;
 - e. The written notice shall inform the holder of a permit of the charges against him, the basis thereof and possible penalties;
 - f. The holder of a permit shall be informed of his right to counsel, the right to present a defense including witnesses for that purpose, and the right to cross-examine any witnesses; *and*

g. The commission may grant a continuance of any review for good cause; ~~and~~.

~~h. A record of the proceedings shall be made.~~

6. ~~The Review proceeding is a hearing~~ *proceedings regarding riding or driving infractions shall be on the record of the stewards hearing and not a new hearing; therefore, presentations by both sides will be limited to arguments and comments regarding the record of the stewards hearing.*

7. *In conducting a review of rulings of the stewards regarding riding or driving infractions, the commission, in its discretion, may allow new evidence to be introduced which, through the exercise of reasonable diligence, could not have been found obtained at the time of the stewards hearing. If the commission determines additional evidence to be introduced may affect the outcome of the case, the commission, in its discretion, may remand the case to the stewards for further review. The stewards shall consider such additional evidence as directed by the commission and, if necessary, in the stewards' discretion, will conduct a new, additional or supplemental hearing. The stewards shall then issue a new decision and order subject to commission review as herein provided.*

VA.R. Doc. No. R06-304; Filed July 28, 2006, 9:13 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Titles of Regulations: **12 VAC 5-70. Regulations Governing the Newborn Screening and Treatment Program (repealing 12 VAC 5-70-10 through 12 VAC 5-70-50).**

12 VAC 5-71. Regulations Governing Virginia Newborn Screening Services (adding 12 VAC 5-71-10 through 12 VAC 5-71-190).

Statutory Authority: § 32.1-12 and Article 7 (§ 32.1-65 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on October 23, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Nancy Ford, Division of Child and Adolescent Health, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7691, FAX (804) 864-7647, or e-mail nancy.ford@vdh.virginia.gov.

Basis: Chapter 721 of the 2005 Acts of Assembly amended and reenacted §§ 32.1-65 through 32.1-67.1 of the Code of Virginia to expand newborn screening by March 1, 2006. As mandated by this act, the Board of Health promulgated emergency regulations to implement provisions of the act to be effective within 280 days of the enactment. The permanent regulation is now being promulgated.

In addition, § 32.1-12 of the Code of Virginia authorizes the Board of Health to make, adopt, promulgate and enforce regulations.

Purpose: The proposed permanent regulation is necessary to replace the emergency regulation, which is in effect from March 1, 2006, through February 28, 2007. The regulation will provide governance for Virginia Newborn Screening Services, a state mandated program administered by the Department of Health.

Virginia Newborn Screening Services is undergoing the most significant expansion in its history from the current panel, which screens for 12 disorders (including hearing screening), to an expanded panel, which will screen for 29 disorders. In concurrence with a 2004 Joint Commission on Health Care study, legislation passed during the 2005 Session of the General Assembly directed the department to expand newborn screening. The expansion is to be consistent with the uniform core panel recently recommended in the 2005 report "Newborn Screening: Toward a Uniform Screening Panel and System" commissioned by the U.S. Department of Health and Human Services. The proposed regulation, as with the emergency regulation, will provide official notice for the conditions for which the Commonwealth tests blood spots of all newborns. Previously, newborn screening conditions had been listed in the Code of Virginia; however, with the breadth of the current expansion and possibilities for further increases as technology continues to advance, listing of conditions will be promulgated through the regulatory process.

The proposed regulation further details responsibilities of parties involved in newborn services, such as hospitals, primary care providers, and the testing laboratory. This is needed to address the level of change the services are undergoing and assure equitable treatment of all infants. In addition, the federal report, "Newborn Screening: Toward a Uniform Screening Panel and System," referenced previously provides guidance to states to develop minimum standards and model policies and procedures. This guidance is incorporated as applicable into the proposed regulation.

The proposed regulation addresses services available for infants and children who have selected heritable disorders and genetic diseases diagnosed through newborn screening services. Previously, the Code of Virginia stipulated special formula and low protein food benefits for children and pregnant women. The statutory change, in effect March 1, 2006, states that all diagnosed individuals are eligible for the Children with Special Health Care Needs Program. The proposed regulation specifies that residents of the Commonwealth who are diagnosed with selected heritable disorders or genetic diseases identified through newborn screening services will be automatically referred to the Care Coordination for Children network for care coordination services. The intent is to describe diagnostic, case management, and financial treatment assistance that the department will be responsible to provide or assure in a consistent format. The intent is to strengthen linkages to an umbrella of services routinely made available to all special needs children, including infants diagnosed through newborn screening. In addition, the proposed regulation seeks to make available assistance equitable regardless of disorder or

disease. Financial assistance to help pay for medical treatments through the Children with Special Health Care Needs Program is means tested and available for children of families and adults at or below 300% of the federal poverty level. The regulation outlines available assistance including the opportunity to purchase metabolic formula through the Virginia Department of Health for those who have incomes above 300% of the federal poverty level.

Substance: The substantive changes outline benefits available to persons diagnosed with conditions listed in the regulations. Resident children under the age of 21 will be referred to the Care Connection for Children Program that is one component of the agency's Children with Special Health Care Needs Program. All resident children regardless of income will qualify to receive case management and family support services. Children in families who meet gross family income means testing (currently at or below 300% of the federal poverty level) may be able to use pool of funds to cover expenses for metabolic formula, hospitalizations, medications, durable medical equipment, and other diagnostic testing not related to the conditions that qualified them for the program. To access the pool of funds, applicants must demonstrate that they have applied for all available state and federal assistance and do not have current insurance that covers their expenses. Resident adults (ages 21 and older) diagnosed with conditions listed in the regulation and with gross incomes at or below 300% of the federal poverty level may qualify for metabolic formula provided to them at no cost. Adults must also demonstrate that they have applied for all available state and federal assistance and do not have current insurance that covers metabolic formula. Children in families and adults above 300% of the federal poverty level and without insurance coverage for metabolic formula will have the opportunity to purchase metabolic formula through the Department of Health. Reimbursement of up to \$1,500 annually may be available to children in families and adults whose incomes are at or below 300% of the federal poverty level for expenses of purchasing low protein modified foods and metabolic supplements. These persons must also demonstrate that they have applied for all available state and federal assistance and do not have current insurance covering low protein modified foods or metabolic supplements. Some sections have added clarifying definitions upon suggestion from the Department of Planning and Budget following their review of the emergency regulation text.

Definitions for care coordination, the pool of funds, metabolic formula, low protein modified foods, and metabolic supplements have been added or modified. All benefits are contingent upon available funding and the commissioner reserves the right to suspend any part of the treatment assistance in order to maintain the financial integrity of the program. A section has been added that provides for the commissioner to further interpret and administer the regulation through guidance documents. Testing services provided under the program have been further clarified as "confirmatory" testing services for abnormal screening results. Infants born in Virginia but who are residents of other states who need follow up will be referred back to their state of residence for follow up and confirmatory testing. Language has been added that authorizes the contracted lab to set the fee charged for

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purchase of newborn dried-blood-spot screening specimen collection kits by hospitals and providers in consultation with the department and in accordance with applicable statutes. Clarifying language about short-term follow up, education, regularly scheduled clinics, program responsibilities, and program evaluation has been added. The Board of Health has determined that it is not necessary to incorporate by reference the federal report: "Newborn Screening: Toward a Uniform Panel and System" by the American College of Medical Genetics in 2005.

Issues: The primary advantage of these regulations will be to identify infants at birth who may have life-threatening genetic and heritable diseases. The number of infants whose lives will be saved or identified before a disease crisis results in a permanent disability will be increased by expanding the number of conditions that all infants are screened for from 12 to 29 as of March 1, 2006. Early identification will provide cost savings to both families and the state. The State of Wisconsin has estimated that for every four dollars spent on newborn screening services, five dollars are saved. Children who are identified with these conditions after a medical crisis tend to have a poorer prognosis and require higher use of long-term medical and assistive care. Families who have infants identified with these conditions may also undergo genetic testing and counseling to help guide future reproductive decisions and medical management.

The primary disadvantage of these regulations will be an increase in the number of families who receive abnormal test results that ultimately do not result in a diagnosed disease. More families may experience stress related to further testing and contemplation of possible disease in their infant.

The roles of health care professionals attending births, primary care providers, hospitals, the screening laboratory, and the agency follow up and education program have been more clearly defined in the emergency and proposed permanent regulation. Time frames and responsibilities for assuring testing and follow up as well as provider and parent notification have been enhanced. This provides for more equitable and quality treatment of all infants born in the Commonwealth regardless of where they are born and receive care.

The fee levied for newborn screening by the contracted testing laboratory (Division of Consolidated Laboratories, Department of General Services) increased from \$32 to \$53 on November 1, 2005, to cover costs associated with expanded newborn screening. Hospitals pay this fee for each newborn screening filter paper, which is used to collect and submit screening specimens. The regulation authorizes the contracted lab to set the fee in consultation with the Department of Health.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The proposed regulations expand the panel of diseases newborns are screened for from 12 to 29. In addition, the proposed amendments establish an income eligibility criterion for publicly provided formula and food benefits and clarify the roles and responsibilities of different entities involved in the newborn screening. The proposed permanent regulations

have been in effect since March 1, 2006, under emergency regulations.

Result of analysis. The benefits likely exceed the costs for all proposed changes.

Estimated economic impact. These regulations establish rules for the newborn screening services in the Commonwealth. The main goal of newborn screening is to test and find out as early as possible whether a baby has certain health problems. The screening is conducted on a few drops of blood from the baby's heel collected on a special test paper. The test paper is purchased by the hospital, birthing center, or health care provider at a cost of \$53 from the Division of Consolidated Laboratory Services within the Department of General Services. Blood samples, once collected, can be used to screen for many different disorders. In some cases, the tests have to be repeated if the blood sample is not taken after the first 24 hours following birth or the sample is contaminated.

Once elevated levels of disease indicators are found in a sample, a follow-up process is initiated by the Department of Health toward a diagnosis and treatment. Screening services includes expert consultation on abnormal results, diagnostic testing, nursing follow up, medical and dietary treatment, and assistance with the purchase of special formulas and low protein foods. These disorders if not treated can lead to slow growth, severe illness, brain damage, or possibly death. Early diagnosis helps prevent serious health problems later in the life while affording the baby the best chance to grow and develop normally.

One of the proposed changes increases the number of heritable and genetic diseases that are screened from 12 to 29. With the proposed changes, the Commonwealth now screens for argininosuccinic acidemia, beta-ketothiolase deficiency, biotinidase deficiency, carnitine uptake defect, citrullinemia, congenital adrenal hyperplasia, congenital hypothyroidism, cystic fibrosis, galactosemia, glutaric acidemia type I, hemoglobin sickle/beta-thalassemia, hemoglobin sickle/c disease, homocystinuria, isovaleric acidemia, long chain hydroxyacyl-CoA dehydrogenase deficiency, maple syrup urine disease, medium-chain acyl-CoA dehydrogenase deficiency, methylmalonic acidemia (mutase deficiency), methylmalonic acidemia, multiple carboxylase deficiency, phenylketonuria, propionic acidemia, sickle cell anemia (Hb SS disease), tyrosinemia type I, trifunctional protein deficiency, very long-chain acyl-CoA dehydrogenase deficiency, 3-hydroxy 3-methyl glutaric aciduria, and methylcrotonyl-CoA carboxylase deficiency. The screening for these disorders is recommended by the American College of Medical Genetics.

These diseases are targeted for screening because advances in technology made it relatively easy to identify abnormal samples. The technology known as "tandem mass spectrometry" makes it possible to screen for all of these diseases using a single dried blood spot. The other characteristic common to these diseases is that there are available treatments for them. Thus, screening leads to early diagnosis that can lead to early treatment and prevention or minimization of significant morbidity or mortality.

The proposed regulations also require that all diagnosed children be referred to Care Connection for Children. Care Connection for Children provides follow-up services such as case management.

Increasing the number of diseases screened from 12 to 29 is estimated to increase the number of metabolic disorder diagnoses by 18 new cases and cystic fibrosis diagnoses by 28 new cases based on the national prevalence estimates. The diagnoses of additional cases are likely to increase the costs. The potential increase in costs to the Commonwealth is estimated at \$586,000. Of this amount, approximately \$108,000 is for 1.5 FTE RN position and 0.66 FTE support staff to conduct daily follow up of abnormal results and the administration of the food/formula program. Approximately \$45,000 is for educating medical providers about the expanded panel of diseases, development of materials, and other training. Approximately \$45,000 is for developing and modifying the existing data reporting systems. Another \$218,000 is anticipated for the costs of contracting with healthcare providers for consulting on abnormal test results and diagnostic testing and long-term medical management. Approximately \$85,000 is estimated for the purchase of special metabolic formulas and low protein modified formulas to be used in the treatment of diagnosed disorders. Finally, approximately \$85,000 is estimated for three FTE positions who will be working at six regional Care Connection Centers for Children to facilitate case management and support.

In practice, a large portion of costs to administer the newborn screening services is financed by the fees collected from hospitals and birthing centers for the test filter paper. The fee is established by the Division of Consolidated Laboratories of the Department of General Services in consultation with VDH. The fee was increased to \$53 in November 2005 from \$32 in order to cover the expected increase in the costs to administer the program. Even though the increase in the fee is not specified in the proposed regulations, the recent increase in the fees practically shifts the additional costs of the proposed regulations onto the hospitals and birthing centers. Moreover, the training for the testing of the additional panel of diseases may increase the costs slightly.

Despite the additional costs, the proposed changes are expected to produce net benefits for the Commonwealth. Available evidence suggests that screening is cost effective. According to VDH, a research study done by the State of Wisconsin indicates every four dollars spent on screening provides five dollars savings in avoided costs. This suggests that we should expect net benefits from the proposed expanded panel of diseases. However, the actual size of benefits is subject to many case specific factors. The number of diseases actually diagnosed, the type of the diseases diagnosed, and the response to treatment are just a few factors to name. These savings could accrue to health care providers, insurance companies, families of newborns, newborns themselves, and the Commonwealth of Virginia. Additionally, the children who are diagnosed and treated avoid poor prognosis and the need for medical and assistive care. Finally, diagnosis of one of these conditions informs parents about a possibility of a genetic disorder and allows them to make informed decisions about future reproductive decisions.

The proposed changes also remove language regarding the amount of formula and food program benefits available. For the special formulas, § 32.1-67 of the Code of Virginia stipulated that VDH reimburse the families for the costs of special formula up to 2% of their income. For the special foods, the statute stipulated that reimbursements be capped at \$2,000 per diagnosed person per year. Effective March 2006, these statutory requirements were removed from the Code of Virginia. With the proposed changes, VDH is making special formula and food benefits available at no charge to individuals with income levels below 300% of the federal poverty level. The cap for special food reimbursements is reduced to \$1,500. Also, VDH is making special formulas and foods available for purchase at cost for those with incomes above 300% of the federal poverty level (FPL). Finally, the financial assistance is expanded to cover other services such as medication, hospitalizations, nutritional supplements, and durable medical equipment.

The proposed changes to the eligibility criteria bring consistency in different types of public assistance made available through the pool of funds, improving the equity among families in need. Individuals with incomes above 300% of the FPL will no longer be able to receive free public benefits, but may purchase special formula and foods at cost from VDH. Additionally, the reduced cap of \$1,500 reimbursement for special foods is likely to increase the out-of-pocket expenditures up to \$500 for some recipients. According to VDH, of the 28 families using this benefit, 12 would qualify, 12 would not qualify under the proposed rules. The income information for the remaining four families is not available to determine whether they would qualify or not.

Finally, the proposed regulations specify the roles and responsibilities of hospitals, primary care providers, and testing laboratory. With these proposed changes, the clarity of the responsibilities of parties involved in administering the screening program is improved. The proposed clarifications should strengthen the enforceability of the proposed regulations, improve the uniformity of the standards across Virginia, and improve the chances of a newborn receiving treatment in a timely manner. Usually, the timing of the treatment is a critical element in the success of the treatment applied.

Businesses and entities affected. Approximately 101,000 infants born each year in the Commonwealth will be screened for an expanded panel of diseases. The specimens are collected by approximately 65 hospitals and birthing centers. The number of licensed physicians and midwives who provide healthcare for the infants is estimated to be approximately 3,800.

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

Projected impact on employment. The proposed regulations may slightly increase the demand for labor due to the additional labor that may be required to test for expanded panel of diseases and are estimated to increase the demand for labor due to the anticipated increase in the diagnosis of more cases. Some of the expected increase in demand for

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labor may be offset by the incentives to reduce capacity as a result of the increased fee.

Effects on the use and value of private property. The proposed regulations are primarily responsible for the fee increase and could necessitate training and consequently are expected to reduce the profitability of the private hospitals and birthing centers that would reduce the asset value of these businesses. Also, the diagnosis of additional disorders may increase or decrease the revenues and the asset values of these hospitals, birthing centers, and other related businesses depending on whether or not they are compensated for the services.

Small businesses: costs and other effects. The main effects of the proposed regulations are expected to be on the hospitals and birthing centers and not so much on the licensed physicians and midwives who could be considered as small businesses.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations are not expected to have a significant effect on small businesses.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health concurs with the economic impact assessment prepared by the Department of Planning and Budget regarding the Regulations Governing Virginia Newborn Screening Services, 12 VAC 5-71.

Summary:

The proposed action repeals the existing newborn screening regulations and promulgates new regulations that conform to Chapter 721 of the 2005 Acts of Assembly. The regulations establish rules for the newborn screening

services in the Commonwealth of Virginia. The proposed regulations (i) provide additional (relevant) definitions, (ii) expand the panel of diseases for which newborns are screened from 12 to 29, (iii) clarify the roles and responsibilities of different entities involved in the newborn screening and (iv) establish an income eligibility criterion for publicly provided formula and food benefits.

CHAPTER 71.

REGULATIONS GOVERNING VIRGINIA NEWBORN SCREENING SERVICES.

12 VAC 5-71-10. Definitions.

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

"Attending physician" means the physician in charge of the infant's care.

"Board" means the State Board of Health.

"Business days" means Monday through Friday from 9 a.m. to 5 p.m., excluding federal and state holidays.

"Care Connection for Children" means a statewide network of centers of excellence for children with special health care needs (CSHCN) that provides leadership in the enhancement of specialty medical services, care coordination, medical insurance benefits evaluation and coordination, management of the CSHCN Pool of Funds, information and referral to CSHCN resources, family-to-family support, and training and consultation with community providers on CSHCN issues.

"Care coordination" means a process that links individuals and their families to services and resources in a coordinated effort to maximize their potential and provide them with optimal health care.

"Certified nurse midwife" means a person licensed to practice as a nurse practitioner in the Commonwealth pursuant to § 54.1-2957 of the Code of Virginia and in accordance with Part II (18 VAC 90-30-60 et seq.) of 18 VAC 90-30 and 18 VAC 90-30-120 and 18 VAC 90-30-160.

"Chief executive officer" means a job descriptive term used to identify the individual appointed by the governing body to act in its behalf in the overall management of the hospital. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president.

"Child" means a person less than 18 years of age and includes a biological or an adopted child, and a child placed for adoption or foster care unless otherwise treated as a separate unit for the purposes of determining eligibility and charges under these regulations.

"Commissioner" means the State Health Commissioner, his duly designated officer, or agent.

"Confirmatory testing" means a test or a panel of tests performed following a screened-abnormal result to verify a diagnosis.

"Core panel conditions" means those heritable disorders and genetic diseases considered appropriate for newborn screening. The conditions in the core panel are similar in that they have (i) specific and sensitive screening tests, (ii) a sufficiently well understood natural history, and (iii) available and efficacious treatments.

"Department" means the state Department of Health.

"Dried-blood-spot specimen" means a clinical blood sample collected from an infant by heel stick method and placed directly onto specially manufactured absorbent specimen collection (filter) paper.

"Guardian" means a parent-, court-, or clerk-appointed guardian of the person.

"Healthcare provider" means a person who is licensed to provide health care as part of his job responsibilities and who has the authority to order newborn dried-blood-spot screening tests.

"Heritable disorders and genetic diseases" means pathological conditions (i.e., interruption, cessation or disorder of body functions, systems, or organs) that are caused by an absent or defective gene or gene product, or by a chromosomal aberration.

"Hospital" means a medical care facility licensed as a hospital by the Virginia Department of Health.

"Infant" means a child less than 12 months of age.

"Low protein modified foods" means foods that are (i) specially formulated to have less than one gram of protein per serving, (ii) intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, (iii) not natural foods that are naturally low in protein, and (iv) prescribed as medically necessary for the therapeutic treatment of inherited metabolic diseases.

"Metabolic formula" means nutritional substances that are (i) prescribed by a health professional with appropriate prescriptive authority; (ii) specifically designed and formulated to be consumed or administered internally under the supervision of such health professional; (iii) specifically designed, processed, or formulated to be distinct in one or more nutrients that are present in natural food; and (iv) intended for the medical and nutritional management of patients with limited capacity to metabolize ordinary foodstuffs or limited capacity to metabolize certain nutrients contained in ordinary foodstuffs.

"Metabolic supplements" means certain dietary or nutritional substances intended to be used under the direction of a physician for the nutritional management of inherited metabolic diseases.

"Midwife" means a person licensed as a nurse practitioner in the category of certified nurse midwife by the Boards of Nursing and Medicine or licensed as a midwife by the Board of Medicine.

"Newborn" means an infant who is 28 days old or less.

"Nurse" means a person holding a current license as a registered nurse or licensed practical nurse by the Virginia

Board of Nursing or a current multistate licensure privilege to practice in Virginia as a registered nurse or licensed practical nurse.

"Parent" means a biological, adoptive, or stepparent.

"Pediatric Comprehensive Sickle Cell Clinic Network" means a statewide network of clinics that are located in major medical centers and provide comprehensive medical and support services for newborns and children living with sickle cell disease and other genetically related hemoglobinopathies.

"Physician" means a person licensed to practice medicine or osteopathic medicine in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia and in accordance with applicable regulations.

"Pool of funds" means funds designated for payment of direct health care services. Access to the pool is not an entitlement and is subject to availability of funds and guidelines that govern its eligibility and coverage of services. Pool of funds is a mix of federal Title V funds and state match.

"Population-based" means preventive interventions and personal health services developed and available for the entire infant and child health population of the Commonwealth rather than for individuals in a one-on-one situation.

"Preterm infant" means a neonate whose birth occurs through the end of the last day of the 36th week following the onset of the last menstrual period.

"Repeat specimen" means an additional newborn dried-blood-spot screening specimen submitted to the testing laboratory voluntarily or by request.

"Resident" means an individual who resides within the geographical boundaries of the Commonwealth.

"Satisfactory specimen" means a newborn dried-blood-spot screening specimen that has been determined to be acceptable for laboratory analyses by the testing laboratory.

"Screened-abnormal" means a newborn dried-blood-spot screening test result that is outside the established normal range or normal value for that test method.

"Testing laboratory" means the laboratory that has been selected by the department to perform newborn dried-blood-spot screening tests services.

"Total parenteral nutrition (TPN)" means giving nutrients through a vein for babies who cannot be fed by mouth.

"Treatment" means appropriate management including genetic counseling, medical consultation, and pharmacological and dietary management for infants diagnosed with a disease listed in 12 VAC 5-71-30 D.

"Unsatisfactory specimen" means a newborn dried-blood-spot screening specimen that is inadequate for performing an accurate analysis.

"Virginia Genetics Advisory Committee" means a formal group that advises the department on issues pertaining to access to clinical genetics services across the Commonwealth and the provision of genetic awareness, quality services, and education for consumers and providers.

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"Virginia Newborn Screening System" means a coordinated and comprehensive group of services, including education, screening, follow up, diagnosis, treatment and management, and program evaluation, managed by the department's Virginia Newborn Screening Services and Virginia Early Hearing Detection and Intervention Program for safeguarding the health of children born in Virginia.

"Virginia Sickle Cell Awareness Program" means a statewide program for the education and screening of individuals for the disease of sickle cell anemia or sickle cell trait and for such other genetically related hemoglobinopathies.

12 VAC 5-71-20. Administration of chapter.

This chapter is administered by the commissioner.

The commissioner may issue a guidance document that interprets these regulations and provides guidance for their implementation. Such a document shall be reviewed and revised whenever the regulations of this chapter are reviewed and may also be amended or revised as needed to meet changing circumstances.

Guidance documents shall include procedures for accessing program services including available assistance when not otherwise addressed in these regulations or the Code of Virginia.

12 VAC 5-71-30. Core panel of heritable disorders and genetic diseases.

A. The Virginia Newborn Screening System, which includes Virginia Newborn Screening Services and the Virginia Early Hearing and Intervention Program, shall ensure that the core panel of heritable disorders and genetic diseases for which newborn screening is conducted is consistent with but not necessarily identical to the recommendations for screening by the American College of Medical Genetics in its 2005 report "Newborn Screening: Toward a Uniform Screening Panel and System."

B. The department shall review, at least biennially, national recommendations and guidelines and may propose changes to the core panel of heritable disorders and genetic diseases for which newborn dried-blood-spot screening tests are conducted.

C. The Virginia Genetics Advisory Committee may be consulted and provide advice to the commissioner on proposed changes to the core panel of heritable disorders and genetic diseases for which newborn dried-blood-spot screening tests are conducted.

D. Infants under six months of age who are born in Virginia shall be screened in accordance with the provisions set forth in this chapter for the following heritable disorders and genetic diseases, which are identified through newborn dried-blood-spot screening tests:

1. Argininosuccinic acidemia (ASA);
2. Beta-ketothiolase deficiency (BKT);
3. Biotinidase deficiency (BIOT);
4. Carnitine uptake defect (CUD);

5. Citrullinemia (CIT);
6. Congenital adrenal hyperplasia (CAH);
7. Congenital hypothyroidism (CH);
8. Cystic fibrosis (CF);
9. Galactosemia (GALT);
10. Glutaric acidemia type I (GA I);
11. Hemoglobin Sickle/Beta-thalassemia (Hb S/βTh);
12. Hemoglobin Sickle/C disease (Hb S/C);
13. Homocystinuria (HCY);
14. Isovaleric acidemia (IVA);
15. Long chain hydroxyacyl-CoA dehydrogenase deficiency (LCHAD);
16. Maple syrup urine disease (MSUD);
17. Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);
18. Methylmalonic acidemia (mutase deficiency) (MUT);
19. Methylmalonic acidemia (Cbl A,B);
20. Multiple carboxylase deficiency (MCD);
21. Phenylketonuria (PKU);
22. Propionic acidemia (PROP);
23. Sickle cell anemia (Hb SS disease) (Hb SS);
24. Tyrosinemia type I (TYR I);
25. Trifunctional protein deficiency (TFP);
26. Very long-chain acyl-CoA dehydrogenase deficiency (VLCAD);
27. 3-hydroxy 3-methyl glutaric aciduria (HMG); and
28. 3-Methylcrotonyl-CoA carboxylase deficiency (3MCC).

E. Infants born in Virginia shall be screened for hearing loss in accordance with provisions set forth in §§ 32.1-64.1 and 32.1-64.2 of the Code of Virginia and as governed by 12 VAC 5-80.

12 VAC 5-71-40. Religious exemption from newborn dried-blood-spot screening requirements.

Refusal by the infant's parent or guardian to consent to the collection and submission of a newborn dried-blood-spot screening specimen because the test conflicts with his religious practices or tenets shall be documented in the medical record and communicated to the department.

12 VAC 5-71-50. Responsibilities of the physician or midwife.

For every live birth in the Commonwealth, the physician or midwife in charge of the infant's care after delivery shall cause the initial collection and submission of a newborn dried-blood-spot screening specimen for testing of those heritable disorders and genetic diseases listed in 12 VAC 5-71-30 D and in accordance with 12 VAC 5-71-70 or 12 VAC 5-71-80.

12 VAC 5-71-60. Responsibilities of the first attending healthcare provider.

In the event that a physician or midwife does not attend the birth and newborn dried-blood-spot screening tests have not been performed, the first attending healthcare provider shall cause the initial collection and submission of a newborn dried-blood-spot screening specimen for testing of those heritable disorders and genetic diseases listed in 12 VAC 5-71-30 D in accordance with 12 VAC 5-71-110.

12 VAC 5-71-70. Newborn dried-blood-spot screening specimen collection, specimen submission, and notification for hospital deliveries.

A. Newborn dried-blood-spot specimen collection and submission shall be done in accordance with requirements that are determined by the department's designated testing laboratory.

B. Newborn dried-blood-spot specimen collection shall occur after 24 hours of age or immediately before the newborn's discharge, whichever comes first.

C. If the initial newborn dried-blood-spot specimen is collected before 24 hours of age, a repeat specimen shall be collected at the time of discharge or no later than 14 days of age, regardless of earlier test results.

D. If the newborn is a preterm infant, the newborn dried-blood-spot specimen shall be collected at seven days of age or at the time of discharge from the hospital, whichever occurs first.

E. If the newborn requires a blood transfusion or total parenteral nutrition (TPN) or if the newborn is suspected of having a heritable disorder or genetic disease that is listed in 12 VAC 5-71-30 D:

- 1. The newborn dried-blood-spot specimen may be collected before 24 hours of age and subsequently submitted; and*
- 2. A repeat newborn dried-blood-spot specimen shall be collected at the time of discharge or no later than 14 days of age, regardless of earlier test results, and subsequently submitted.*

F. On notification by the hospital that the infant was discharged before a newborn dried-blood-spot specimen was collected, the healthcare provider in charge of the infant's care or his designee shall:

- 1. Notify the infant's parent that the infant was discharged before a newborn dried-blood-spot specimen was collected;*
- 2. Cause the collection of a specimen within 48 hours of that parental notification; and*
- 3. Cause the submission of the specimen.*

G. If the newborn is to be transferred to another hospital and is less than 24 hours of age:

- 1. The physician or certified nurse midwife in charge of the infant's care at the hospital of birth shall:*

a. Cause the collection a newborn dried-blood-spot specimen before the newborn is transferred to another hospital;

b. Cause the submission of the specimen; and

c. Notify the receiving physician or healthcare provider that a newborn dried-blood-spot specimen was collected before 24 hours of age.

2. The receiving physician or healthcare provider shall:

a. Cause the collection of a repeat specimen at the time of discharge or no later than 14 days of age, regardless of earlier test results; and

b. Cause the submission of the specimen.

H. If the infant is transferred to another hospital and is 24 hours of age or older, the physician in charge of the infant's care at the hospital of birth shall:

1. Cause the initial collection and submission of a newborn dried-blood-spot specimen for the infant who is being transferred;

2. Notify the receiving physician or physician of record on transfer that the infant's specimen has been collected; and

3. Notify the receiving physician or physician of record if a newborn dried-blood-spot specimen needs to be repeated or if confirmatory testing is required.

I. The healthcare provider in charge of the infant's care, on receiving notice from the testing laboratory that the infant's newborn dried-blood-spot specimen is unsatisfactory, shall:

1. Cause the collection of a repeat specimen as soon as possible but no later than two business days after notice; and

2. Cause the submission of the specimen.

J. The healthcare provider in charge of the infant's care, on receiving notice of the results of the infant's newborn dried-blood-spot screening test, shall place or cause to be placed the results in the infant's medical record and cause parental notification of test results.

K. The healthcare provider in charge of the infant's care, on receiving notice of the infant's screened-abnormal result, shall:

1. Cause the collection of a repeat newborn dried-blood-spot specimen for repeat or confirmatory testing as soon as possible but no later than two business days after notice;

2. Cause the submission of the specimen; and

3. Take immediate action, as instructed, when notified of a critically abnormal screening result.

12 VAC 5-71-80. Newborn dried-blood-spot screening specimen collection, specimen submission, and notification for deliveries outside of the hospital.

A. In the event that the infant is born outside of a hospital, the attending physician or midwife shall ensure that:

1. Newborn dried-blood-spot specimen collection and submission is done in accordance with requirements that

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are determined by the department's designated testing laboratory.

2. Newborn dried-blood-spot specimen collection occurs after 24 hours of age.

3. If the initial newborn dried-blood-spot specimen is collected before 24 hours of age, a repeat specimen shall be collected no later than 14 days of age, regardless of earlier test results.

4. If the newborn is hospitalized, the infant's healthcare provider shall cause the newborn dried-blood-spot screening specimen collection and submission in accordance with 12 VAC 5-71-70.

B. The healthcare provider in charge of the infant's care, on receiving notice of the results of the infant's newborn dried-blood-spot screening test, shall place or cause to be placed the results in the infant's medical record and cause parental notification of test results.

C. The healthcare provider in charge of the infant's care, on receiving notice from the testing laboratory that the infant's newborn dried-blood-spot specimen is unsatisfactory, shall:

1. Cause the collection of a repeat specimen as soon as possible but no later than two business days after notice; and

2. Cause the submission of the specimen.

D. The healthcare provider in charge of the infant's care, on receiving notice of the infant's screened-abnormal result, shall:

1. Cause the collection of a repeat newborn dried-blood-spot specimen for repeat or confirmatory testing as soon as possible but no later than two business days after notice;

2. Cause the submission of the specimen; and

3. Take immediate action, as instructed, when notified of a critically abnormal screening result.

If a licensed midwife has ordered the newborn-dried-blood-spot screening test and is notified that the results are unsatisfactory or abnormal, the infant shall be immediately referred to a physician or health care facility for repeat collection and submission and for care and treatment as necessary.

12 VAC 5-71-90. Responsibilities of the chief executive officer.

The chief executive officer shall assure that the hospital providing birthing services develops and implements policies and procedures to make certain that the following steps take place:

1. Collection of newborn dried-blood-spot screening specimens shall occur after 24 hours of birth, and collection and submission of the specimens shall meet the standards required by the testing laboratory;

2. Notification of the newborn's physician of record or designee shall occur within one business day in the event that the infant is discharged before the newborn dried-blood-spot screening specimen has been collected;

3. Communication of the newborn dried-blood-spot screening test results to the newborn's physician of record or designee shall occur so that test results may become part of the infant's medical record on file with the physician;

4. Information relative to newborn screening dried-blood-spot results and treatment shall be recorded in the patient's medical record, and retention of the information shall comply with applicable medical record retention requirements; and

5. Training of staff on newborn dried-blood-spot screening specimen collection and submission and parental notification shall be implemented in a way that ensures an adequately trained and knowledgeable workforce is maintained for implementing specimen collection and submission and parental notification according to standards required by the testing laboratory and guidance from the department.

12 VAC 5-71-100. Responsibilities of the testing laboratory providing newborn dried-blood-spot screening tests.

A. Newborn dried-blood-spot screening tests shall be performed by the Division of Consolidated Laboratory Services or other laboratory the department has contracted with to provide this service in accordance § 32.1-65 of the Code of Virginia.

B. The testing laboratory shall maintain accreditation under the Clinical Laboratory Improvement Amendments as defined in 42 CFR Part 493.

C. The testing laboratory shall perform required initial and secondary tests using validated analytical test methods and establish normal ranges and notification protocols as defined in the contract with the department. The testing laboratory may seek the advice of the Newborn Screening Subcommittee of the Virginia Genetics Advisory Committee.

D. On completion of newborn dried-blood-spot screening tests for the infant, the testing laboratory shall provide the completed test results to the submitting facility and to the infant's healthcare provider, as indicated on the newborn screening sample.

E. The testing laboratory shall provide the department's newborn screening services with the newborn dried-blood-spot screening test data that are necessary to carry out follow-up services.

F. The testing laboratory shall manage the distribution of newborn dried-blood-spot screening specimen collection kits.

G. The testing laboratory is authorized to set the fee charged to birthing hospitals and physicians for purchase of newborn dried-blood-spot screening specimen collection kits in consultation with the department and in accordance with applicable state statutes and regulations.

H. The testing laboratory shall maintain an information management system capable of electronic data exchange between the laboratory and the department's newborn screening services.

12 VAC 5-71-110. Reporting to the commissioner.

A. Physicians, midwives, public health nurses and other nurses who receive newborn dried-blood-spot screening test results, and administrators of hospitals in the Commonwealth shall make or cause to be made a report to the commissioner of a person under the age of two diagnosed as having a heritable disorder or genetic disease for which newborn dried-blood-spot screening tests are conducted.

B. The diagnosed cases shall be reported in accordance with § 32.1-69.1 of the Code of Virginia.

12 VAC 5-71-120. Scope and content of Virginia Newborn Screening Services.

A. The mission of Virginia Newborn Screening Services is to prevent mental retardation, permanent disability, or death through early identification and treatment of infants who are affected by those heritable disorders and genetic diseases listed in 12 VAC 5-71-30 D.

B. The scope of newborn screening services shall include the following:

1. Ensure that infants born in the Commonwealth receive newborn dried-blood-spot screening, confirmatory testing, and follow-up services for selected heritable disorders or genetic diseases;
2. Locate and track infants with screened-abnormal results or unsatisfactory results, a short-term process of ensuring that the identified healthcare provider is informed of results, in a timely matter, by at least six months of age, to determine if the infant has a selected heritable disorder or genetic disease;
3. Ensure that the department receives all diagnostic test results, both normal and screened-abnormal results, from healthcare providers;
4. Ensure that appropriate diagnostic data are collected, stored, and organized in a secure data management information system that allows for efficient extraction of appropriate data from the testing laboratory to newborn screening services in accordance with federal and state laws and regulations;
5. Assess and evaluate newborn screening services follow-up activities by collecting and reporting data required annually for Title V national performance measures that address how well the system functions;
6. Educate healthcare providers, parents, and the general public by electronic or written materials and educational sessions, as deemed necessary by the department;
7. Facilitate the entry of infants with screened-abnormal results into medical and dietary management services as needed upon receiving notification from the contracted lab of such results;
8. Ensure that residents of the Commonwealth who are diagnosed with selected heritable disorders or genetic diseases identified through newborn screening services are referred to the Care Connection for Children network for care coordination services; and

9. Provide information to residents of the Commonwealth who are diagnosed with selected heritable disorders or genetic diseases identified through newborn screening services regarding available assistance for obtaining metabolic formula, low protein modified foods, and metabolic supplements that are medically necessary to manage their diagnosed heritable disorder or genetic disease listed in 12 VAC 5 71-30-D.

C. To ensure full implementation of newborn screening services, the department may establish contracts with, but not be limited to, the following entities, and the established contracts shall comply with all federal assurances:

1. A designated testing laboratory;
2. Medical facilities to provide metabolic treatment and genetic services; and
3. Other entities as needed.

D. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA; Public Law 103-62), shall be used to establish newborn screening services goals. The following goals shall change as needed to be consistent with applicable Title V national performance measures: All infants who are born in the Commonwealth and who are residents of Virginia will receive appropriate newborn dried-blood-spot screening, confirmatory testing, and follow-up services. All infants who are born in the Commonwealth and who are not residents of Virginia will receive appropriate newborn dried-blood-spot screening and be referred to their state of residence for confirmatory testing and follow-up services.

12 VAC 5-71-130. Responsibilities of the Pediatric Comprehensive Sickle Cell Clinic Network.

A. Upon notification by Virginia Newborn Screening Services of an infant diagnosed with sickle cell disease, the Virginia Sickle Cell Awareness Program shall track infants identified with sickle cell disease and related hemoglobinopathies to ensure that they receive care and refer the infants to the Pediatric Comprehensive Sickle Cell Clinic Network.

B. The Pediatric Comprehensive Sickle Cell Clinic Network shall provide the following services:

1. Consultation on screened-abnormal results to primary care providers and parents;
2. Family counseling and support;
3. Regularly scheduled clinics, which meet the needs of the population served; and
4. Referral to appropriate inpatient care facilities.

C. The Pediatric Comprehensive Sickle Cell Clinic Network shall provide data as needed by the department's newborn screening services.

12 VAC 5-71-140. Responsibilities of metabolic treatment and genetic centers facilities.

A. The department's contracted metabolic treatment and genetic centers facilities shall collaborate with a specialized testing laboratory or laboratories for performing diagnostic

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testing on infants referred by the department's newborn screening services in accordance with § 32.1-65 of the Code of Virginia.

B. The department's contracted metabolic treatment and genetic centers facilities shall provide the following clinical services:

1. Consultation on screened-abnormal results to healthcare providers;
2. Family counseling and support;
3. Regularly scheduled clinics;
4. Appropriate inpatient care facilities;
5. Clinical genetic services; and
6. Nutritional counseling and support.

C. The department's contracted metabolic treatment and genetic centers facilities shall provide written diagnostic and other related case information to the department's newborn screening services.

12 VAC 5-71-150. Responsibilities of the Care Connection for Children network.

A. The Care Connection for Children network shall provide the following services:

1. Care coordination services for residents of the Commonwealth who are diagnosed with selected heritable disorders or genetic diseases and are referred to the network by Virginia Newborn Screening Services.
2. Other network services for eligible individuals in accordance with the § 32.1-77 of the Code of Virginia and applicable regulations.

B. The Care Connection for Children network shall provide data as needed by the department's newborn screening services.

12 VAC 5-71-160. Availability of assistance for obtaining metabolic formula, low protein modified foods, and metabolic supplements.

A. The department shall maintain a procedure to assist eligible persons in obtaining metabolic formula, low protein modified foods, and metabolic supplements.

B. Expenditures shall be limited to available funding.

C. Resident children under the age of 21 who have a diagnosis of a heritable disorder or genetic disease listed in 12 VAC 5-71-30 D and meet financial eligibility criteria for the Children with Special Health Care Needs Program pool of funds in accordance with the State Board of Health Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals (12 VAC 5-200) may qualify to receive metabolic formula at no cost. Applicants who qualify must demonstrate that they are not eligible for available state and federal medical assistance programs and must demonstrate that they do not have insurance coverage for metabolic formula.

D. Resident children under the age of 21 who have a diagnosis of a heritable disorder or genetic disease listed in 12 VAC 5-71-30 D and do not meet financial eligibility criteria for the Children with Special Health Care Needs Program pool of funds in accordance with the State Board of Health Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals (12 VAC 5-200) may be eligible to purchase metabolic formula through the Virginia Department of Health.

E. Resident adults ages 21 or older who have a diagnosis of a heritable disorder or genetic disease listed in 12 VAC 5-71-30 D and who have a gross family income at or below 300% of the federal poverty level in accordance with the State Board of Health Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals (12 VAC 5-200) may qualify to receive metabolic formula at no cost. Applicants who qualify must demonstrate that they are not eligible for available state and federal medical assistance programs and must demonstrate that they do not have current insurance coverage for metabolic formula.

F. Resident adults ages 21 or older who have a diagnosis of a heritable disorder or genetic disease listed in 12 VAC 5-71-30 D and who do not meet financial criteria or other eligibility criteria in accordance with the State Board of Health Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals (12 VAC 5-200) may qualify to purchase metabolic formula through the Virginia Department of Health.

G. Residents who have a diagnosis of a heritable disorder or genetic disease listed in 12 VAC 5-71-30 D and who have a gross family income at or below of 300% of the federal poverty level in accordance with the State Board of Health Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals (12 VAC 5-200) may be eligible to receive reimbursement from the department up to \$1,500 per year for purchase of low protein modified foods and metabolic supplements. Applicants who qualify must demonstrate that they are not eligible for available state and federal medical assistance programs and must demonstrate that they do not have current insurance coverage for low protein modified foods or metabolic supplements for which they are seeking reimbursement.

12 VAC 5-71-170. Emergency suspension of assistance.

The commissioner may suspend any portion of the assistance plan to ensure the financial integrity of Virginia Newborn Screening Services. The commissioner shall report any action taken under the provisions of this section to the Board of Health at its next scheduled meeting.

12 VAC 5-71-180. Use of federal, state, or other resources.

A. The commissioner or his designee may seek, receive, and expend federal, state general, or other nongeneral funds for the department necessary to administer newborn screening services.

B. Federal Title V funds received for the Children with Special Health Care Needs Program, authorized by § 32.1-77 of the Code of Virginia, may be used to support the department's

newborn screening services, in accordance with applicable federal and state laws and regulations.

12 VAC 5-71-190. Confidentiality of information.

The department's newborn screening services and its contractors shall maintain, store, and safeguard client records from unauthorized access as required by law.

VA.R. Doc. No. R06-97; Filed August 1, 2006, 4:09 p.m.

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Title of Regulation: 12 VAC 5-125. Regulations for Bedding and Upholstered Furniture Inspection Program (adding 12 VAC 5-125-10 through 12 VAC 5-125-180).

Statutory Authority: § 32.1-12 of the Code of Virginia.

Public Hearing Date: October 11, 2006 - 3 p.m.

Public comments may be submitted until October 20, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Gary L. Hagy, Director, Division of Food and Environmental Services, Department of Health, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, or e-mail gary.hagy@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia authorizes the Board of Health to promulgate regulations necessary to carry out the provisions of Title 32.1 of the Code of Virginia. These regulations implement the provisions of §§ 32.1-212 through 32.1-226 and 59.1-200 of the Code of Virginia.

Purpose: The purpose of the regulations is to ensure that only safe and healthy bedding and upholstered furniture products are being sold in the Commonwealth, that uniformity with other state bedding programs be maintained, and that the Code of Virginia be enforced.

Substance: The proposed regulations are a result of Chapter 1003 of the 2003 session of the General Assembly, as specified in House Bill 2810, requiring that the department promulgate the bedding and upholstered furniture laws into regulations. No regulations previously existed.

The regulations adhere closely to the requirements of the Code of Virginia. The statutes cover basic definitions, use of new and used filling materials, sale and disposal of bedding or upholstered goods, permitting and licensing requirements and fees, tagging of goods with appropriate law labels (tags), offenses relating to tags, violations of the Code of Virginia, prohibited practices, exemptions to the Code of Virginia and administrative enforcement of the Code of Virginia. The substantive regulatory additions to the requirements contained in the Code of Virginia are:

1. Expansion of definitions as provided by other state bedding and upholstered furniture inspection programs.
2. Inspection conditions. A key element of Chapter 1003 of the 2003 Acts of Assembly was to prohibit inspections of licensed vendors to only when a complaint is made to the Commissioner of Health. Given this limitation, these regulations identify those conditions initiating an inspection.

These conditions include, but are not limited to, receipt of a complaint against a licensed manufacturer or vendor, inspections of vendors not possessing a permit or license, inspections resulting from observations made by a bedding inspection in the course of an inspection of an unlicensed vendor, late receipt of a renewal fee, and application for a license or permit.

Issues: The regulatory action poses no disadvantages to the public or the Commonwealth. The advantages for the action are that the regulations, when adopted, will provide assurance that used bedding is cleaned and sanitized before being resold or rented. The regulations will also limit government intrusion into upholstered furniture business in the Commonwealth by restricting inspections to only complaint investigations or inspections of those entities that are not properly licensed.

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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. In response to House Bill 2810 passed by the 2003 General Assembly, the Department of Health has proposed a new set of regulations (none existed previously) governing Bedding and Upholstered Furniture Inspections. The proposed new regulations will expand bedding and upholstered furniture definitions, outline causes for inspections, expand exemptions to the bedding laws, and outline penalties for violations. The purpose of the new regulations is to insure that safe and healthy bedding and upholstered furniture products are being sold in Virginia and that uniformity with other state bedding programs is maintained.

Estimated economic impact. The proposed new regulations are not expected to add any additional costs to the legitimate

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businesses involved in the bedding and upholstered furniture industries, which includes mattress manufacturers, renovators, sanitizers, upholstered furniture manufacturers, retailers, and re-upholsterers. The Department of Health issues licenses and permits to businesses involved in the bedding and upholstered furniture industry. Licenses are issued to businesses that deal with products that include mattress manufacturers, upholstered furniture manufacturers, re-upholsterers, renovators, and retailers (§ 32.1-216 of the Code of Virginia). The department issues permits to businesses involved in processes that currently includes only sanitizers (§ 32.1-217 of the Code of Virginia). A key element of the proposed new inspection regulations is to limit inspections of licensed vendors to only those cases where a complaint has been made to the Commissioner of Health, or where vendors do not possess a license or permit, or when a vendor makes application for a license or permit. The adoption of these new inspection regulations may result in a reduction in scheduled inspections but will not lead to reduced agency workload or increased agency and industry costs. The Bedding and Upholstered Furniture Program is a very small program with only six total employees, four of which are part time, and the program receives no state funding. Any reduction in inspections resulting from the proposed amendments dealing with inspection conditions will be replaced by other staff actions possibly involving more frequent inspections of eligible vendors or other inspection and policing actions involving retail operations or stores and gypsy sellers who are usually from out of state and are unlicensed and set up operations from trucks in parking lots. These inspection and policing actions may be beneficial to the public because there have been cases where gypsy sellers have sold unsafe bedding. If the department can reduce this risk through additional time spent inspecting those merchants in place of inspecting other merchants less likely to put the public at risk then this proposed amendment might produce a net benefit.

There will be no projected costs to the state government or the regulatory agency (Department of Health) for the adoption of the proposed regulatory amendments because the inspection program is totally self-supporting through the license and permit fees.

Businesses and entities affected. There are approximately 5,300 businesses worldwide that hold Virginia licenses or permits dealing with the bedding and upholstered furniture industry. These businesses are involved in all aspects of the industry and include mattress manufacturers, renovators, sanitizers, upholstered furniture manufacturers, re-upholsterers, and retailers. It is estimated that less than 20% of these license or permit holders or roughly 1,000 are located in Virginia. Of the estimated 1,000 permit holders in Virginia, approximately 600-700 are estimated to qualify as small businesses that would be affected by the proposed new regulations.

Localities particularly affected. The proposed amendments do not disproportionately affect particular Virginia localities.

Projected impact on employment. The proposed amendments will have no impact on employment in legitimate businesses.

Impact on the use and value of private property. The proposed amendments will have no adverse impact on the use and value of legitimate private property and may have a positive impact on the health and safety of Virginia purchasers of bedding and upholstered furniture products if the amendments result in more enforcement and policing of gypsy sellers and other unlicensed vendors who are more likely to sell unsafe bedding and upholstered furniture products.

Small businesses: costs and other effects. The majority of license and permit holders in the bedding and upholstered furniture industry that are located in Virginia are estimated to be small businesses. Of the estimated 1,000 license and permit holders operating in Virginia, 600-700 or 60%-70% of the total are considered small businesses. Although small businesses make up the majority of license and permit holders, the proposed amendments do not impose upon them adverse costs or other adverse effects and they are treated the same as other license and permit holders provided that they adhere to the license and permit regulations. The proposed amendments do not add to the costs of permit holders. Nonpermit holding gypsy sellers may be inspected more often and be prevented from selling unsafe products.

Small businesses: alternative method that minimizes adverse impact. The proposed amendments do not adversely affect legitimate small businesses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Department of Health substantially concurs with the Department of Planning and Budget's analysis.

Summary:

The regulations expand bedding and upholstered furniture definitions, outline causes for inspections, expand exemptions to the bedding law in the Code of Virginia, and outline penalties for violations.

CHAPTER 125.

REGULATIONS FOR BEDDING AND UPHOLSTERED FURNITURE INSPECTION PROGRAM.

12 VAC 5-125-10. Definitions.

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

"Antique" means any product that is at least 75 years old.

"As is" means a sales term to describe bedding and upholstered furniture products as any condition other than in new or undamaged condition.

"Bedding" means any mattress, mattress pad, box spring, upholstered bed, davenport, futon, upholstered sofa bed, quilted pad, packing pads, hammock pad, comforter, quilt, bolster, cushion, pillow, featherbed, sleeping bag, studio couch, or any other bag, case, pillow, cushion, or cover made of leather, textile, or other material that is stuffed or filled in whole or in part with concealed substance that can be used by any human being for sleeping or reclining purposes.

"Bedding Program" means the Bedding and Upholstered Furniture Inspection Program, a unit of the Department of Health authorized by the commissioner to carry out the duties and responsibilities of this chapter.

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner, his duly designated officer or agent.

"Department" means the State Department of Health.

"Designee" or "designated officer or agent" means any person or group of persons designated by the commissioner to act on his behalf.

"Distributor/wholesaler" means any person who receives bedding, upholstered furniture, or filling materials from another company for the purpose of resale.

"Filling material" means cotton, wool, feathers, kapok, down, hair, liquid, plant or vegetable fibers, or any other material or substance or combination thereof, loose or in batting, pads, or any prefabricated form, concealed or not concealed, that is used or that may be used in articles of bedding or upholstered furniture.

"Importer" means any person who for the purpose of manufacture or resale receives bedding, upholstered furniture or filling material from any country other than the United States.

"Inspector" means department employees designated by the commissioner to inspect, examine, investigate, evaluate and conduct tests, review documentation, interview witnesses, take samples and provide testimony in the enforcement of Title 32.1 of the Code of Virginia and § 59.1-200 of the Virginia Consumer Protection Act.

"Law label" means the tag bearing legal information concerning the contents and manufacturing location as required by § 32.1-219 of the Code of Virginia. A white tag certifies all new materials. A yellow label indicates used materials.

"License" means permission granted in accordance with § 32.1-217 of the Code of Virginia for every person manufacturing, importing, distributing/wholesaling, processing or selling any filling materials to be used in new bedding and upholstered furniture, and reupholstering or renovating bedding or upholstered furniture being returned to its original owner.

"Licensing state" means any of the United States that require a manufacturer, importer, distributor/wholesaler, supply dealer, reupholsterer, or renovator to apply for a license in order to sell bedding and upholstered furniture products in that state.

"Manufacturer" means a person who, using new materials, makes or has employees or agents who make any article of bedding or upholstered furniture in whole or in part, or who covers or upholsters any unit thereof.

"New" means not previously used for any purpose. Uncovered floor models and customer returns shall not be considered new. Manufacturing process shall not be considered prior use.

"Permit" means consent granted in accordance with § 32.1-216 of the Code of Virginia to approve a process to sanitize or sterilize filling material, bedding or upholstered furniture by a person treating used products for resale.

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

"Renovator" means a person who rebuilds, repairs, makes over, re-covers, restores, renovates or renews used bedding.

"Retailer" means any person engaged in commerce who sells any article of bedding, upholstered furniture or filling materials to a consumer of the article as purchased.

"Reupholsterer" means a person who, either by himself or through employees or agents, repairs, reupholsters, recovers, restores, or renews upholstered furniture; or who makes to order and specification of the user any article of upholstered furniture, using either new materials or the owner's materials.

"Sanitize" means to reduce the level of microbiological agents to a level not injurious to health.

"Sanitizer" means a person who sanitizes articles of bedding or upholstered furniture.

"Secondhand" means having been made prior use of or containing any filling material of which prior use has been made or that has been in a customer's possession.

"Sell" or any of its variants, includes any of, or any combination of, the following: sell, offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell or dispose of in any other commercial manner.

"Shoddy" means any material that has been spun into yarn, knit, or woven into fabric and subsequently, cut up, torn up, broken or ground up.

"Shoddy pad" (also called "insulator pad") means a nonwoven material made from byproducts of textile or manufacturing processes and is free from dirt, insects, and other contamination.

"Soiled or torn" means articles of new or used bedding or upholstered furniture that contain stains, dirt, ripped edges or covers, or damaged frames.

"Sterilize" means to render free of viable microbiological agents.

"Supply dealer" means a person who manufactures, processes or sells any felt, batting, pads, woven or plastic fabrics, or loose material in bags or containers, concealed or not concealed, to be used or that could be used in articles of upholstered furniture or bedding.

"Uniform registry number" (also called "registration number" and "REG. NO.") means a unique number assigned to a licensee by a licensing state to identify the name and each location of a manufacturer, reupholsterer, sanitizer, renovator, or importer of bedding and upholstered products. The Uniform Registry Number begins with the initials of the licensing state, followed by the assigned number, then the initials of the state or country where the manufacturer, reupholsterer, sanitizer,

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renovator, or importer is physically located. Each location of a manufacturer, reupholsterer, sanitizer, renovator, or importer uses only one Uniform Registry Number.

"Upholstered furniture" means any article of furniture designed to be used for sitting, resting or reclining that is wholly or partly stuffed or filled with any filling material. Upholstered furniture may include, but is not limited to, children's furniture, furniture used exclusively for the purpose of physical fitness and exercise, medical equipment, or furniture or seats in RVs, boats or automobiles. Upholstered furniture may be movable or stationary, made or sold with cushions or pillows, loose or attached, or is itself stuffed or filled in whole or in part with any substance or material, hidden or concealed by fabric or any other covering, including cushions or pillows belonging to or forming a part thereof, together with the structural units, the filling material and its container and its covering that can be used as a support for the body of a human being, or his limbs and feet.

"Used" means bedding or upholstered furniture that has been previously owned or used by another person.

"Wholesaler" means a person who, on his own account, sells any article of upholstered furniture or bedding or filling materials to another for the purpose of resale.

Filling material definitions will be in accordance with definitions published in the 2004 Edition of the International Sleep Products Association Handbook.

12 VAC 5-125-20. Administration.

A. The board has the responsibility to promulgate, amend and repeal regulations necessary to protect the public health and the environment.

B. The State Health Commissioner is the chief executive officer of the State Department of Health. In accordance with §§ 32.1-20 and 32.1-22 of the Code of Virginia, the commissioner has the authority to act for the board when it is not in session, subject to such rules and regulations as may be prescribed by the board, and may employ such personnel as are necessary for the proper performance of his duties as executive officer of the board.

C. In addition to other authority granted by law, the commissioner has the authority to do the following:

1. Approve the process of sanitizing or sterilizing filling materials, bedding, or upholstered furniture.
2. Issue licenses/permits and assign a uniform registry number to importers, manufacturers, renovators, reupholsterers, or sanitizers.
3. Order the return of any item of bedding or upholstered furniture or any filling material made, remade, renovated, reupholstered, prepared, processed, labeled or not labeled in violation of the provisions of this chapter to the manufacturer or importer thereof.
4. Inspect the premises of a holder of a license or permit issued by the commissioner, subject to the requirements set forth at 12 VAC 5-125-80.

5. Refuse to issue, suspend or revoke the license or permit of any person (i) who violates any provision of this chapter, any regulation of the board pursuant to this chapter or any order of the board or commissioner or (ii) who is not a resident of the Commonwealth and fails or refuses to enter an appearance in any circuit court in the Commonwealth to answer a charge or charges of violation of any provision of this chapter, regulation of the board or order of the board or commissioner.

12 VAC 5-125-30. Powers and procedures of chapter not exclusive.

The board reserves the right to authorize a procedure for enforcement of this chapter that is not inconsistent with the provisions set forth herein and the provisions of Chapter 1 (§ 32.1-1 et seq.) of Title 32.1 of the Code of Virginia.

12 VAC 5-125-40. Exemptions.

The provisions of this chapter shall not apply to:

1. Any item of bedding or upholstered furniture sold under the order of any court or pursuant to § 55-419 of the Code of Virginia, any sale of a decedent's estate or any sale by any individual of his household effects.
2. Upholstered furniture and bedding products that are antiques as defined in 12 VAC 5-125-10.
3. Any interstate public carrier.
4. Any state institution, agency or department unless such institution, agency or department offers for sale to the public items of bedding or upholstered furniture manufactured, reupholstered or renovated by it.
5. Any retailer who sells, gives away, or rents used upholstered furniture that has been purchased by the retailer as new furniture and has been used in the course of business when such used furniture has been (i) conspicuously identified as used furniture and (ii) reduced in price, sold at auction, donated to charity, or made available for a rental fee, and so tagged.
6. Any person who sells at retail, exclusively on a consignment basis, articles of bedding that are handmade by individuals and whose gross annual receipts from the sale of such articles are not in excess of \$2,000 shall be deemed to be the manufacturer of such articles and shall not be required to obtain a license to make such articles. Each such article shall have a label affixed stating the kind of filling materials used in such article but shall be exempt from any other requirement as to tags set forth in this chapter.

12 VAC 5-125-50. Licenses, permits, and registration numbers.

A. Licenses for manufacturers, importers, distributors, wholesalers, renovators, reupholsterers, supply dealers.

1. Every importer and every person manufacturing, renovating or reupholstering any bedding or upholstered furniture or processing or selling any filling material to be used in articles of bedding or upholstered furniture, such as a distributor/wholesaler or supply dealer, shall first obtain a

license from the commissioner for each place of business, subsidiary, branch or branch factory operated or contracted by him for such purpose.

2. Such license shall be numbered; shall, unless sooner revoked, expire one year from the date of issue; shall be renewable annually through receipt of a fee; and shall not be transferable. The commissioner shall assign a uniform registry number to each licensee.

3. Each branch, branch factory and subsidiary shall be responsible for the contents and for the tagging, as provided in this chapter, of items of bedding and upholstered furniture made, remade, renovated, reupholstered, or imported by it and offered for sale or use in the Commonwealth.

4. Every person who, on his own account or for others, sells or distributes either directly or indirectly to any person either at wholesale or retail any bedding, filling material, shoddy pad, or upholstered furniture by means of a permanent location, car, truck, catalog, office, Internet sales or in any other manner, shall obtain from the commissioner a license for each such method of sale or distribution.

B. Permits for sterilizers and sanitizers. Every person who, on his own account or for others, is a sterilizer or a sanitizer shall obtain from the commissioner a permit for each location at which sterilizing or sanitizing operations occur. Any person applying for approval of a process by which filling materials, bedding, or upholstered furniture are sanitized or sterilized shall submit to the commissioner a description of the process, test results and any apparatus and method to be used in such process. Upon approval of such process by the commissioner and payment of the current annual permit fee by the applicant, a numbered permit for use of such process shall be issued. Such permit shall expire one year from the date of issue. Nothing herein shall prevent any person from having any sanitizing or sterilization required by this chapter performed by any person who has a valid permit for such purposes, provided the number of such permit appears on the tag attached to each article as required by § 32.1-219 of the Code of Virginia.

C. General provisions.

1. Any person subject to this section must obtain a new license or permit when there is change of ownership or a change of Federal Taxpayer Identification Number (TIN). A new license or permit is not required for a change of company name or address if the ownership remains the same, but the person must notify the commissioner of such change within 30 days after such change. Licenses and permits are nontransferable.

2. Every person subject to this section doing business at the same address under more than one firm name shall obtain a license for each firm name.

D. Procedure for obtaining a license or permit.

1. Submit a written application for license or permit to the Bedding Program on a form provided by the Bedding Program prior to selling in the Commonwealth.

2. With the application, submit the required application fee, in accordance with the fee schedule, in the form of a check in U.S. dollars.

E. Issuance of license or permit. The Bedding Program shall issue the appropriate license or permit to the applicant after:

1. A properly completed application is submitted;

2. The appropriate fee, if required, is submitted;

3. A preoperational inspection shows that the manufacturer, importer, distributor, wholesaler, renovator, reupholsterer, or supply dealer is in compliance with the requirements of this chapter.

12 VAC 5-125-60. Revocation of a license or permit.

The commissioner may, after providing an opportunity for a hearing, revoke a license or permit for flagrant or continuing violation of any of the requirements of this chapter.

Prior to revocation, the commissioner shall notify in writing the holder of the license or permit of the specific reason for which the license or permit is to be revoked. The license or permit shall be revoked at the end of the 15 days following service of such notice unless a written request for a hearing is filed before then with the commissioner. If no request for a hearing is filed within the 15-day period, the revocation of the license or permit shall be final.

12 VAC 5-125-70. Application after revocation.

Any person whose license or permit has been revoked, may apply for a new license or permit by following the procedures outlined in 12 VAC 5-125-50.

12 VAC 5-125-80. Bedding and upholstered furniture inspections.

A. Inspections of license and permit holders.

Inspection of the premises of a holder of a license or permit issued under this chapter will be initiated upon the following complaints when they relate to a violation of this chapter:

1. Upon complaints received by the commissioner.

2. Upon complaints received by the Bedding Program.

3. Upon complaints received by the Department of Agriculture and Consumer Services and reported to the commissioner or Bedding Program.

4. Upon complaints made to an inspector in the course of a routine inspection and reported to the Bedding Program.

5. Upon complaints against a licensee made by an inspector when noted in the course of a routine inspection of an ancillary operation (such as a sanitizer, distributor/wholesaler or retailer) and reported to the Bedding Program.

6. Upon complaints (or findings of violations) against a licensee by the authorities of a government jurisdiction outside the Commonwealth that the licensee has sold bedding in violation of laws, regulations or standards of that jurisdiction dealing with tagging, sanitization, or consumer protection requirements.

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7. Upon late or nonrenewal of permit or license by a licensee or permit holder or upon late notification of a change of location. Renewal application and payment not received by the due date contained in the renewal notice and a failure to timely notify the commissioner of a change of address shall result in the licensee being moved to an unlicensed status and may result in an inspection by the Bedding Program to determine if the licensee continues in business. If the licensee continues to operate, a license or permit shall not be issued until a program inspection occurs and the requirements of the law are satisfied.

Inspections will be carried out and completed as required under the law.

B. Request for information, documents; verifications.

1. Upon complaint, the commissioner may request that a licensee provide information and documentation to substantiate its compliance with the requirements of this chapter. The commissioner may also require that the accuracy and completeness of such information and documentation be verified.

2. Upon a finding that a licensee has failed to timely and fully comply with a request for information and documents issued by the commissioner, or failed to substantiate the accuracy and completeness of such information and documentation, a review may be conducted by the Bedding Program.

3. Any holder of a license or permit is required to report to the Bedding Program any occurrences of insect infestation at the licensee's or permit holder's place of business or in any article of new or used bedding or upholstered furniture offered for sale, rent, or use.

C. Inspections of unlicensed entities. Inspections of unlicensed entities and of retailers of bedding and upholstered furniture may be conducted in accordance with § 32.1-25 of the Code of Virginia.

Inspections shall be conducted upon receipt of application for a permit or license by an unlicensed entity.

12 VAC 5-125-90. Law labels conforming to the Virginia law.

A. Every importer of and every person manufacturing a new item of bedding or upholstered furniture shall attach securely thereto a substantial white cloth tag (law label) or equivalent, visible on the outside covering of such item and not less than six square inches in size, upon which shall be plainly stamped or printed, in English, the name and address of the manufacturer, importer, or distributor, the registration number of the manufacturer or importer, the kind of filling material used therein, a statement that the filling materials are new, and the number of the permit issued to the person sterilizing any new feathers, hair, or down in such item.

B. Law labels for new bedding and upholstered furniture shall be securely attached to the article or filling material at the point of manufacture, in a position where they can be conveniently examined. Law labels shall contain no advertising matter, nor anything that detracts or is likely to detract from the required statements. No mark, tag, sticker, or

any other device shall be placed upon law labels by any dealer or any other person in such a way as to cover the required statements. No one may possess such law labels outside that facility unless by prior approval of the commissioner for correction purposes.

C. Any person sanitizing, remaking, renovating, or reupholstering any secondhand item of bedding or upholstered furniture, or manufacturing any item of bedding or upholstered furniture containing any shoddy or secondhand filling material, shall attach securely to it a substantial yellow cloth tag or equivalent (law label), visible on the outside of such item and not less than six square inches in size, upon which shall be stamped or printed, in English, the kind of filling materials used therein, a statement that the item or filling materials are secondhand, and the number of the permit issued to the person who sanitized such item or filling material. This requirement shall not apply to mattresses that contain a shoddy pad unless it otherwise contains secondhand filling materials.

D. Any person shipping or delivering filling material, however contained, shall have conspicuously attached thereto a law label upon which shall be stamped or printed, as provided in § 32.1-219 of the Code of Virginia or as provided in this chapter, the kind of material, whether the material is new or secondhand, the name, address, and registration number of the manufacturer or importer, and the permit number of the person who sterilized or sanitized such material.

E. The stamp or print on law labels required by this section shall be in type not less than three millimeters in height.

F. It shall be unlawful to use any false or misleading statement, term or designation on any tag required by this chapter or to remove, deface or alter, or to attempt to remove, deface or alter any such tag or the statement of filling materials made thereon, prior to retail sale.

G. No person shall use or have in his possession with intent to use any tag provided for in this chapter unless such person holds a license or permit issued to him pursuant to this chapter. No person shall sell, give or in any way provide such law labels to anyone who does not have a license, or permit issued to him pursuant to this chapter, or is not allowed to use such a tag pursuant to this provision.

(Specific law label requirements contained in Attachments 1-7)

THE FOLLOWING LABELS COMPLY WITH THE VIRGINIA LAW

NO. 1
WHITE LABEL FOR ALL NEW MATERIAL
For Filling Material NOT Requiring Sterilization

SPACE TO ATTACH →

In bold, black ink, minimum type size 3mm in height

→
*Space for description of filling material.
Printing to be in English using capital letters
not less than 3mm in height*

→
See NOTE (3) at bottom of page. →

Required in Virginia →

*"Date of Delivery" line of Manufacturer's stock
information, etc., here.*

→

<hr/> <p>UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY CONSUMER</p> <hr/> <p>ALL NEW MATERIAL CONSISTING OF</p> <hr/> <p>REG. NO.</p> <hr/> <p>Certification is made by the manufacturer that the materials in this article are described in accordance with law.</p> <hr/> <p>MADE BY (NAME OF MANUFACTURER OR VENDOR) (ADDRESS OF MANUFACTURER OR VENDOR) Date of Delivery _____</p> <hr/> <p style="text-align: center;"><i>(Additional Information)</i></p>

Note:

- (1) All above printing in black ink on white vellum cloth or a material of comparable quality, which shall not flake out when abraded.
- (2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (six) square inches, but may be greater as the need demands.
- (3) Virginia approves and recognizes the uniform registry number and will accept the registration number issued by another state, if registrant so desires, providing such registration follows the policy of uniform registration. This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law label used, regardless of where merchandise may be shipped. The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO., then name of state in which factory is located shall follow the registration number in parenthesis.

Proposed Regulations

ATTACHMENT 2

NO. 2
WHITE LABEL FOR ALL NEW MATERIAL
ARTICLES WITH EXTRA CUSHIONS AS AN
INTEGRAL PART OF UNIT
For Filling Material NOT Requiring Sterilization

SPACE TO ATTACH →

In bold, black ink, minimum type size 3mm in height

→
*Space for description of filling material.
Printing to be in English using capital letters
not less than 3mm in height*

→
See NOTE (3) at bottom of page. →

Required in Virginia →

*"Date of Delivery" line of Manufacturer's stock
information, etc., here.*

→

UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY CONSUMER
ALL NEW MATERIAL CONSISTING OF BODY CUSHIONS
REG. NO. _____
Certification is made by the manufacturer that the materials in this article are described in accordance with law.
MADE BY (NAME OF MANUFACTURER OR VENDOR) (ADDRESS OF MANUFACTURER OR VENDOR) Date of Delivery _____
<i>(Additional Information)</i>

Note:
(1) All above printing in black ink on white vellum cloth or a material of comparable quality, which shall not flake out when abraded.
(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (six) square inches, but may be greater as the need demands.
(3) Virginia approves and recognizes the uniform registry number and will accept the registration number issued by another state, if registrant so desires, providing such registration follows the policy of uniform registration. This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law label used, regardless of where merchandise may be shipped. The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO., then name of state in which factory is located shall follow the registration number in parenthesis.

NO. 3
WHITE LABEL FOR ALL NEW MATERIAL
For Animal and Fowl and Any Other Filling Material Requiring Sterilization

SPACE TO ATTACH →

In bold, black ink, minimum type size 3mm in height

→

*Space for description of filling material.
Printing to be in English using capital letters
not less than 3mm in height*

→

See NOTE (3) at bottom of page. →

Required in Virginia →

*"Date of Delivery" line of Manufacturer's stock
information, etc., here.*

→

<p>UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY CONSUMER</p>	
<p>ALL NEW MATERIAL CONSISTING OF</p>	
REG. NO.	PERMIT NO.
<p>Certification is made by the manufacturer that the materials in this article are described in accordance with law</p>	
<p>CONTENTS STERILIZED</p>	
<p>MADE BY (NAME OF MANUFACTURER OR VENDOR) (ADDRESS OF MANUFACTURER OR VENDOR) Date of Delivery _____</p>	
<p>(Additional Information)</p>	

Note:

(1) All above printing in black ink on white vellum cloth or a material of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (six) square inches, but may be greater as the need demands.

(3) Virginia approves and recognizes the uniform registry number and will accept the registration number issued by another state, if registrant so desires, providing such registration follows the policy of uniform registration. This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law label used, regardless of where merchandise may be shipped. The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and if factory is located in another state than that issuing REG. NO., then name of state in which factory is located shall follow the registration number in parenthesis.

(4) Virginia will accept the PERMIT NO. issued by another state if applicant so desires providing approval is granted and a Virginia Sterilization Permit is issued to applicant bearing such number.

Proposed Regulations

ATTACHMENT 4

NO. 4

**YELLOW LABEL FOR ARTICLES THAT HAVE BEEN REMADE AND
RENOVATED FOR CONSUMER AND THAT CONTAIN
SECONDHAND MATERIAL IN WHOLE OR IN PART**
If new filling material has been added, state type in space provided

<p style="text-align: center;">SPACE TO ATTACH →</p> <p style="text-align: center;"><i>In bold, black ink, minimum type size 3mm in height</i></p> <p style="text-align: center;">→</p> <p style="text-align: center;"><i>Space for description of filling material. Printing to be in English using capital letters not less than 3mm in height</i></p> <p style="text-align: center;">→</p> <p style="text-align: center;"><i>Registration number or name of person or firm that renovated article</i> →</p>	<p>UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY CONSUMER</p> <hr/> <p>This article contains the same material received from the owner, to which has been added the following New material.</p> <hr/> <p>The following work has been done:</p> <table><thead><tr><th>YES</th><th>NO</th><th></th></tr></thead><tbody><tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td>Old covering completely removed</td></tr><tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td>Frame repaired</td></tr><tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td>Spring retied and/or repaired</td></tr></tbody></table> <p>OTHER: _____</p> <hr/> <p>REG. NO. VA. _____</p> <hr/> <p>This article must not be sold, it is the property of and must be returned to:</p> <p>Name _____</p> <p>Address _____</p> <hr/> <p>REMADE AND RENOVATED BY _____</p> <p>Date _____</p> <p>(Additional Information)</p>	YES	NO		<input type="checkbox"/>	<input type="checkbox"/>	Old covering completely removed	<input type="checkbox"/>	<input type="checkbox"/>	Frame repaired	<input type="checkbox"/>	<input type="checkbox"/>	Spring retied and/or repaired
YES	NO												
<input type="checkbox"/>	<input type="checkbox"/>	Old covering completely removed											
<input type="checkbox"/>	<input type="checkbox"/>	Frame repaired											
<input type="checkbox"/>	<input type="checkbox"/>	Spring retied and/or repaired											

Note:
(1) All above printing in black ink on yellow vellum cloth or a material of comparable quality, which shall not flake out when abraded.
(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (six) square inches, but may be greater as the need demands.
(3) If secondhand filling material is added instead of new, article is required to be sanitized and Law Label No. 6 shall be used stating Permit No. of person or firm doing the sanitizing.

NO. 5
YELLOW LABEL FOR ARTICLES CONTAINING
ALL SECONDHAND MATERIAL OFFERED
FOR SALE OR RENT "AS IS"
REQUIRED TO BE SANITIZED

<p>SPACE TO ATTACH → <i>In bold, black ink, minimum type size 3mm in height</i> →</p> <p><i>Permit number of person or firm who sanitized article</i> →</p>	<p>UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY CONSUMER</p> <hr/> <p>THIS ARTICLE CONTAINS ALL SECOND-HAND MATERIAL CONTENTS UNKNOWN</p> <hr/> <p>PERMIT. NO. _____</p> <p>Certification is made by the manufacturer that the materials in this article are described in accordance with the Law .</p> <p>_____ SANITIZED</p> <hr/> <p>SANITIZED BY _____</p> <p>Date Sanitized _____</p> <p>(Additional Information)</p>
--	--

Note:

(1) All above printing in black ink on yellow vellum cloth or a material of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (six) square inches, but may be greater as the need demands.

Proposed Regulations

ATTACHMENT 6

NO. 6
YELLOW LABEL FOR ARTICLES THAT HAVE BEEN RENOVATED
FOR RESALE AND THAT CONTAIN
SECONDHAND MATERIAL IN WHOLE OR IN PART
REQUIRED TO BE SANITIZED

<p>SPACE TO ATTACH →</p> <p><i>In bold, black ink, minimum type size 3mm in height</i></p> <p>→</p> <p><i>Registration number of person or firm who renovated article. Permit number of person or firm who sanitized article</i></p> <p>→</p>	<hr/> <p>UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY CONSUMER</p> <hr/>
	<p>THIS ARTICLE CONTAINS</p> <hr/> <p>SECOND HAND MATERIAL</p> <hr/> <p>TO WHICH HAS BEEN ADDED</p> <hr/> <p>REG. NO. _____ PERMIT NO. _____</p> <hr/> <p>Certification is made by the manufacturer that the materials in this article are described in accordance with the law.</p> <hr/> <p>CONTENTS</p> <p>SANITIZED</p> <hr/> <p>REMADE AND RENOVATED BY</p> <p>RENOVATOR NAME _____</p> <p>RENOVATOR ADDRESS _____</p> <p>Date Sanitized _____</p> <p>(Additional Information)</p>

Note:
(1) All above printing in black ink on white vellum cloth or a material of comparable quality, which shall not flake out when abraded.
(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (six) square inches, but may be greater as the need demands.

NO. 7
WHITE LABEL FOR ALL NEW MATERIAL
ARTICLES IMPORTED INTO THE UNITED STATES
For Filling Material NOT Requiring Sterilization

SPACE TO ATTACH →

In bold, black ink, minimum type size 3mm in height

→

Space for description of filling material.

Printing to be in English using capital letters not less than 3mm in height

→

See note (3) at bottom of page →

Required in Virginia →

"Date of Delivery" line of Manufacturer's stock information, etc., here.

→

Name of country where factory is located

→

UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY CONSUMER

ALL NEW MATERIAL
CONSISTING OF

REG. NO.

Certification is made by the manufacturer that the materials in this article are described in accordance with law

IMPORTED BY

Date of Delivery _____

MADE IN

Note:

(1) All above printing in black ink on white vellum cloth or a material of comparable quality, which shall not flake out when abraded.

(2) Size of label: Exclusive of the portion required to affix the tag to the article, the minimum size of the tag shall be not less than (six) square inches, but may be greater as the need demands.

(3) Virginia approves and recognizes the uniform registry number and will accept the registration number issued by another state, if registrant so desires, providing such registration follows the policy of uniform registration. This policy is intended to benefit the registrant by requiring but one registration to be imprinted on the law label used, regardless of where merchandise may be shipped. The registration number shall be preceded by name of state (may be abbreviated) issuing REG. NO. and the two letter abbreviation of the country in which factory is located shall follow the registration number in parenthesis.

Proposed Regulations

12 VAC 5-125-100. Sanitization of used bedding and upholstered furniture.

A. No person engaged in commerce shall rent, offer or expose for sale, barter, give away, or dispose of in any other commercial manner any article of bedding or upholstered furniture made, remade, reupholstered or renovated in violation of § 32.1-213 or 32.1-214 of the Code of Virginia or any secondhand article of bedding or upholstered furniture unless since last used such secondhand article has been sanitized by a reasonable process approved by the commissioner. However, a retailer may sell, give away, or rent used upholstered furniture when the used upholstered furniture has been purchased by the retailer as new furniture and has been used in the course of business. Such used furniture shall be (i) conspicuously identified as used furniture and (ii) reduced in price, sold at auction, donated to charity, or made available for a rental fee, and so tagged.

B. No person shall use in the making, remaking, reupholstering or renovating of any bedding or upholstered furniture any shoddy or any fabric from which shoddy is made or any secondhand filling material or any secondhand feathers, animal hair or down, unless such shoddy, secondhand filling material, feathers, animal hair or down has been sanitized by a reasonable process approved by the commissioner.

C. Steri-Fab or Microban, or a comparable product approved by the commissioner meeting all the qualities and specifications of these chemicals, are the industry-recognized chemicals for sanitizing and disinfecting mattresses, bedding or upholstered furniture. This process is required for any business sanitizing used, secondhand or renovated mattresses, box springs, or similar articles of bedding or upholstered furniture offered for resale or rent in Virginia. The use of these chemicals in compliance with the specific instructions from the product manufacturers is deemed a reasonable sanitization process approved by the commissioner. All licensees are required to follow all product application, safety, storage, and disposal instructions provided by the product manufacturers. It is a violation of federal law to use Steri-Fab or Microban disinfectant in a manner inconsistent with its labeling. Diluting or mixing with other chemicals is prohibited.

D. Yellow law labels must be attached and dated as soon as sanitizing process is completed.

E. Persons donating (no monetary exchange) secondhand articles of bedding and upholstered furniture are not required to sanitize those articles if the donation is to a holder of a valid sanitizing permit. Any items sold (monetary exchange) must be sanitized first.

F. Persons dealing in used bedding and upholstered furniture shall maintain a log of sanitized items, indicating identification of item, date sanitized, and date rented or sold.

12 VAC 5-125-110. Sterilization of new animal hair, feathers and down.

No person shall use in the making, remaking, reupholstering or renovating of any bedding or upholstered furniture any new animal hair, new feathers, or new down unless such new

animal hair, new feathers, or new down shall have been sterilized by a reasonable process approved by the commissioner.

12 VAC 5-125-120. Separation and storage of new and sanitized items.

A. New and sanitized upholstered furniture, bedding and filling materials shall be kept separate from any secondhand upholstered furniture, bedding and filling materials that have not been sanitized. To prevent contamination, a distance of at least 20 feet or a dividing wall must be kept between new and sanitized articles, and unsanitized used articles of bedding and upholstered furniture.

B. Delivery vehicles shall be disinfected before delivering new or sanitized items if that vehicle has been used to previously transport unsanitized used merchandise, not limited to bedding and upholstered furniture.

C. Mattresses shall be stored at least six inches from the floor or the height of one standard pallet (whatever is greater) in a dry room preferably above ground, and so spaced to allow a four inch separation around the four sides of the mattresses. The storage as well as workroom areas for sanitized items shall be clean and free from trash, vermin, insects, filth and any hazardous waste. Pets and other animals shall be prohibited in storage and workroom areas.

12 VAC 5-125-130. Violation of regulations.

A. It is the responsibility of the retailer to make certain that any article of bedding or upholstered furniture that he offers for sale in the Commonwealth of Virginia regardless of where manufactured, is properly labeled and is in compliance with all provisions of the law.

B. Upon a complaint made to the commissioner as provided in § 32.1-224 of the Code of Virginia, the commissioner may order the return of any item of bedding or upholstered furniture or any filling material made, remade, renovated, reupholstered, prepared, processed, labeled, or not labeled in violation of the provisions of this chapter to the manufacturer or importer thereof. The manufacturer or importer shall be liable to the person returning such item for the costs of crating, shipping and the invoice price to the purchaser. Failure of a manufacturer or importer to pay such costs to the person returning such item shall be grounds for revocation or suspension of a license issued pursuant to this chapter.

C. The commissioner or his designee may order "off sale" all improperly sanitized or unsanitized articles of secondhand bedding or upholstered furniture. A significant number of violations in any one business location will result in a sign being placed on the business door taking off sale all used bedding and upholstered items in the store. These items may not be bartered, given away, rented or disposed of in any manner inconsistent with this chapter until properly sanitized.

D. The commissioner may refuse to issue, may suspend or may revoke the license or permit of any person who violates any provision of this chapter, or who is not a resident of the Commonwealth and fails or refuses to enter an appearance in any circuit court in the Commonwealth to answer a charge or charges of violation of any provision of this chapter, or order of

the board or commissioner within 25 days after service upon him of a notice by certified mail.

E. Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 of the Code of Virginia and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).

F. Any person violating any provision of this chapter shall be guilty of a Class 2 misdemeanor pursuant to § 32.1-226 of the Code of Virginia.

12 VAC 5-125-140. Enforcement of regulation.

A. This chapter shall be enforced by the board and the commissioner, as executive officer of the board.

B. All persons shall operate in compliance with the requirements set forth in this chapter and shall not operate without a valid license or permit.

C. Pursuant to the authority granted in § 32.1-224 of the Code of Virginia, the commissioner may issue orders to require any license or permit holder or other person to comply with the provisions of this chapter. The order may require the following:

1. The immediate cessation and correction of the violation;
2. Appropriate remedial action to ensure that the violation does not continue or recur;
3. The submission of a plan to prevent future violations;
4. Any other corrective action deemed necessary for proper compliance with the regulations, and safety and health of the consumers of the Commonwealth.

D. Before the issuance of an order, the commissioner must comply with the requirements of § 32.1-26 of the Code of Virginia.

E. All orders issued pursuant to subsection C of this section shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the license or permit holder or person violating this chapter.

F. The commissioner may act as the agent of the board to enforce all effective orders and these regulations. Should any license or permit holder fail to comply with any effective order or these regulations, the commissioner may:

1. Institute a proceeding to revoke the license or permit in accordance with 12 VAC 5-125-60;
2. Request the attorney for the Commonwealth to bring a criminal action;
3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or
4. Do any combination of the above.

G. Not exclusive means of enforcement. Nothing contained in this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

H. Hearings before the commissioner or his designee shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved:

1. Informal hearings. An informal hearing is a meeting with the Bedding Program Supervisor presiding and held in conformance with § 2.2-4019 of the Code of Virginia.

2. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding before the commissioner, or his designated hearing officer, and held in conformance with § 2.2-4020 of the Code of Virginia.

12 VAC 5-125-150. Request for hearing.

A request for an informal hearing shall be made by sending the request in writing to the Bedding Program. Requests for hearings shall cite the reasons for the hearing request and shall cite the section(s) of these regulations involved and must be received within 15 days of the decision by the department that lead to the hearing request.

12 VAC 5-125-160. Hearing as a matter of right.

Any person holding a license or permit or named party whose rights, duties, or privileges have been, or may be affected by any case decision of the board or its subordinates in the administration of these regulations, shall have a right to both informal and adjudicatory hearings. The commissioner may require participation in an informal hearing before granting the request for a full adjudicatory hearing. Exception: No person other than an owner shall have the right to an adjudicatory hearing to challenge the issuance of a license or permit unless the person can demonstrate at an informal hearing that the minimum standards contained in these regulations have not been applied and that he will be injured in some manner by the issuance of the license or permit.

12 VAC 5-125-170. Penalties, injunctions, civil penalties and charges for violations.

A. Any person willfully violating, or refusing, failing, or neglecting to comply with any regulations or order of the board or commissioner, or any provision of this chapter, shall be guilty of a Class 2 misdemeanor unless a different penalty is specified. Each day of violation shall constitute a separate offense.

B. Any person violating, or failing, neglecting, or refusing to obey any order of the board or commissioner, or any provision of this chapter may be compelled, in a proceeding instituted in an appropriate court by the board or commissioner, to obey and comply with such regulations, order, or any applicable provision of Title 32.1 of the Code of Virginia. The proceeding may be by injunction, mandamus, or other appropriate remedy.

C. Without limiting the remedies that may be obtained pursuant to subsection B of this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection B of this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation. Each day of violation shall constitute a separate offense.

Proposed Regulations

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board or commissioner or any applicable provision of Title 32.1 of the Code of Virginia, the board may provide, in an order issued by the board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit set forth in subsection C of this section. Such civil charges shall be in place of any appropriate civil penalty that could be imposed under subsection C of this section.

12 VAC 5-125-180. Fees.

The board shall set the annual fees imposed for licenses and permits issued pursuant to this chapter. All fees collected shall be deposited and held by the department in a separate fund, from which shall be paid all expenditures necessary in carrying out the provisions of this chapter.

The board shall review the fees being charged for the services delivered by the department pursuant to Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1 as such services and fees were in effect prior to July 1, 2003, and shall revise such fees, as appropriate, consistent with the level of services required by this chapter.

The fee schedule established by the board is as follows:

<i>Vendor Description:</i>	<i>Annual Fee:</i>
<i>Manufacturer of bedding</i>	<i>\$100</i>
<i>Manufacturer of upholstered furniture</i>	<i>\$100</i>
<i>Renovator (bedding)</i>	<i>\$25</i>
<i>Reupholsterer</i>	<i>\$25</i>
<i>Supply dealer</i>	<i>\$25</i>
<i>Importer</i>	<i>\$100</i>
<i>Sanitizer</i>	<i>\$60</i>
<i>Distributor/wholesaler</i>	<i>\$100</i>

DOCUMENT INCORPORATED BY REFERENCE

2004 Manual of Labeling Laws, Registration Requirements, International Sleep Products Association.

VA.R. Doc. No. R04-166; Filed June 20, 2006, 11:20 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: 12 VAC 30-30. Groups Covered and Agencies Responsible for Eligibility Determination (adding 12 VAC 30-30-60).

12 VAC 30-40. Eligibility Conditions and Requirements (amending 12 VAC 30-40-10).

12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-530; adding 12 VAC 30-50-35 and 12 VAC 30-50-75).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 20, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Jack Quigley, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680, or e-mail jack.quigley@dmas.virginia.gov.

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. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC 1396a) provides governing authority for payments for services. Chapters 24 and 56 of the 2005 Acts of Assembly required these regulatory changes.

Purpose: The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) established the Medicare Prescription Drug Program, also known as Medicare Part D, making prescription drug coverage available to individuals who are entitled to receive Medicare benefits under Part A or Part B, which began on January 1, 2006. Previously, Virginia's Medicaid Program provided outpatient drugs for its Medicaid recipients, both the categorically needy and medically needy. As of January 1, 2006, Medicaid recipients who are entitled to receive Medicare benefits under Part A or Part B were no longer eligible to receive their pharmacy benefits under the state's Medicaid Program, except for drugs that are excluded under the Medicare Prescription Drug Program. Virginia was required to submit state Plan Amendments to ensure that its state Medicaid Program pharmacy benefits are consistent with the requirements under Part D. DMAS also must ensure a continuum of coverage for medically necessary drugs, and the transportation necessary to obtain those drugs.

The MMA also established the Low-Income Subsidy (LIS) to assist individuals who have low income and resources with payment of the premiums, deductibles, and co-payments required under Part D. The MMA requires both the Social Security Administration and the State Medicaid agency to accept and process applications for LIS. States had to have in place the capacity to accept and provide assistance with such applications by July 1, 2005, for individuals who requested such a determination by the state. In addition, the MMA required the state to provide for screening of individuals who may be eligible for Medicare cost-sharing as Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), or Qualified Individuals (QIs), and to offer enrollment to eligible individuals. These requirements appear both in the statute (§ 1935(a) of the Social Security Act) and in federal regulations at 42 CFR 423.774 and 423.904.

Virginia had in place these provisions via an emergency regulation on January 1, 2006, which reflected its compliance with the MMA and met the criteria for receipt of any federal financial assistance claimed in conjunction with Virginia's compliance with the MMA. DMAS must continue to cover the

drugs and services described below in order to maintain comparability of services. This present action is the next step in making these changes permanent.

Substance: A new provision (12 VAC 30-30-60) requires the Medicaid agency to determine eligibility for premium and cost-sharing subsidies under Part D for Medicare beneficiaries and report subsidy eligible individuals to the Centers for Medicare and Medicaid services. This provision also mandates that the Medicaid agency screen individuals for Medicare cost-sharing and offer enrollment to eligible individuals.

An amendment to 12 VAC 30-40-10 requires beneficiaries that may be eligible for Medicare Parts A, B and/or D to enroll in those programs as a condition of eligibility for Medicaid. Application for Medicare is a condition of eligibility unless the state does not pay the applicable Medicare premiums and cost-sharing, except those applicable under Part D, for persons covered by the Medicaid eligibility group under which the individual is applying.

New 12 VAC 30-50-35 provides assurance that the Medicaid agency will not cover any Part D drug for a full-benefit Medicaid recipient who is entitled to receive Medicare benefits. It also requires the Medicaid agency to provide to the Centers for Medicare and Medicaid Services information regarding which drugs excluded for payment under Medicare Part D will be covered by Medicaid for categorically needy individuals.

New 12 VAC 30-50-75 provides assurance that the Medicaid agency will not cover any Part D drug for a full-benefit Medicaid recipient who is entitled to receive Medicare benefits. It also requires the Medicaid agency to provide to the Centers for Medicare and Medicaid Services information regarding drugs excluded for payment under Medicare Part D will be covered by Medicaid for medically needy individuals.

An amendment to 12 VAC 30-50-530 provides assurances that the Medicaid agency will provide necessary transportation for dual-eligible recipients to obtain medically necessary, noncovered Medicare Part D prescription drugs.

Issues: Medicare beneficiaries who do not have access to prescription drug coverage may benefit from the Medicare Part D program and the Commonwealth will benefit where it currently pays with general funds for prescription drugs through various agencies (e.g., DMHMRSAS, VDH). These regulations will ensure that the Commonwealth is the payer of last resort for Medicaid eligible individuals who also qualify for Medicare.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) mandates that state Medicaid enrollees who are also Medicare eligible (dual eligibles) receive their prescription drug benefits through Medicare not Medicaid beginning January 1, 2006. There are no advantages to the Medicaid population or the agency as a result of these regulations that were necessary to comply with the MMA. There are disadvantages for the dual eligibles in that they must select from a confusing array of Medicare-approved private prescription drug plans, or be auto-assigned to one, which may or may not include all of their needed medications in the plan's formulary. There are minimum required co-payments for prescriptions, whereas under

Medicaid an individual could not be compelled to make co-payments if the individual could not afford it. Disadvantages for the agency and Commonwealth include substantial administrative activities/costs in order to discontinue drug coverage under Medicaid and implement coverage under Medicare. The MMA also requires states to help finance Medicare Part D by paying the federal government the state share of the cost of prescription drug coverage for the dual eligibles. The Phased-Down State Contribution, or "clawback," is set at 90% of costs for 2006 and decreases to 75% by 2015. However, Virginia has implemented a number of pharmacy savings initiatives that are not reflected in the federal government's calculation of the state's clawback amount. Therefore, the clawback amount far exceeds what the cost would be for Virginia if the state were to continue to provide drug coverage to dual eligibles through Medicaid as in previous years.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The Board of Medical Assistance Services (board) proposes to amend regulations on Medicaid to coordinate with the new Medicare Prescription Drug Program (Part D) as mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). As of January 1, 2006, Medicaid recipients who are entitled to receive Medicare benefits under Part A or Part B are no longer eligible to receive their pharmacy benefits under the state's Medicaid Program, except for drugs that are excluded under the Medicare Prescription Drug Program.

Results of analysis. The costs likely exceed the benefits for one or more proposed changes.

Estimated economic impact. Medicare is a federal health insurance program for people aged 65 or older, disabled workers, and individuals that have permanent kidney failure or amyotrophic lateral sclerosis (Lou Gehrig's disease). Before 2006,¹ there were three different parts to Medicare Coverage: Hospital Insurance (Part A) that helps pay for inpatient care in a hospital or skilled nursing facility (following a hospital stay), some home health care and hospice care; Medical Insurance (Part B) that helps pay for doctors' services and many other medical services and supplies that are not covered by hospital insurance; and Medicare Advantage (Part C) formerly known as Medicare + Choice plans that allow beneficiaries to select from a private health plan provider (e.g. a Health Maintenance Organization or HMO) that contracts with Medicare to provide all of the covered health services.

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 established the Medicare Prescription Drug Program (Part D), which provides coverage of outpatient drugs for Medicare beneficiaries that enroll in a Part D Plan from January 1, 2006.² Anyone who has Medicare hospital insurance (Part A), medical insurance (Part B) or a Medicare Advantage plan is eligible for prescription drug

¹ The Medicare prescription drug benefit started in 2004 with the Medicare Prescription Drug Discount Card and Transitional Assistance Program, a credit for low-income beneficiaries. The full Medicare part D prescription drug benefit takes effect January 1, 2006.

² Ibid.

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coverage (Part D). Joining a Medicare prescription drug plan is voluntary except for "dual eligibles" (Medicaid enrollees who are also Medicare eligible) and will involve an additional monthly premium for the coverage.³ For individuals who are entitled to Medicare and have low income, the MMA established the Low-Income Subsidy (LIS) to assist them with payment of the premiums, deductibles, and co-payments required under Part D.

Compliance with the MMA is a condition for states' participation in the federally funded Medicaid program. Although states have the option of not requiring Medicare enrollment as a condition of Medicaid eligibility, the federal government will provide no federal reimbursement for the costs of any drugs that could otherwise have been covered under Medicare Part D. Also, states are required to help finance Medicare Part D by paying the federal government the state share of the cost of prescription drug coverage for the dual eligibles, which is known as "clawback."⁴

In response to this federal mandate, the board amended its Medicaid regulations via an emergency regulation (effective January 1, 2006) that reflected the Commonwealth's compliance with the MMA and met the criteria for receipt of any federal financial assistance claimed in conjunction with Virginia's compliance with the MMA. Now the board proposes to promulgate a permanent regulation that will replace the emergency regulation.

The proposed regulations will require Medicaid applicants who are eligible for Medicare to enroll in Medicare Part A, B and/or D in order to be covered by Medicaid. The state agrees to pay any applicable premiums and cost-sharing except those applicable under Part D.⁵ Previously, Virginia's Medicaid Program provided outpatient drugs for its Medicaid recipients, both the categorically needy and medically needy. As of January 1, 2006, Medicaid recipients who are entitled to receive Medicare benefits under Part A or Part B are no longer eligible to receive their pharmacy benefits under the state's Medicaid Program, except for drugs that are excluded under the Medicare Prescription Drug Program.⁶ The "dual eligibles" will have to select from a number of Medicare-approved private prescription drug plans, or be auto-assigned to one, which may or may not include all of their needed medications in the plan's formulary.⁷ Although the "dual

eligibles" qualify for a full drug subsidy (no premium, no deductible, low co-payments) under Medicare Part D, they will have to pay the minimum required co-payments for prescriptions, which is \$1 for a generic and \$3 for brand-name drugs, whereas under Medicaid an individual could not be compelled to make co-payments if he/she could not afford it.

Pharmacies may be slightly affected by the proposed regulations⁸ in that now they may refuse to fill the prescription if the individual cannot afford the co-payments, while previously they had to provide prescription even without co-payments. The positive effect will likely not be large and may be offset by the possibility that Medicare may not compensate them as well as Medicaid did.

The proposed regulation will increase administrative costs for Department of Medical Assistance Services (DMAS) in transitioning from Medicaid to Medicare,⁹ providing for determination of eligibility for Medicare Low-Income Subsidy, as well as screening individuals for all Medicaid programs including Medicare Savings Program. An estimate for the increased administrative costs is not available according to DMAS. The local departments of social services (LDSS) will incur a small amount of increase in working hours in responding to inquiries and assisting in applications for the Part D LIS and drug plan selection. Virginia Department for the Aging (VDA), local Area Agencies on Aging or Virginia Insurance Counseling and Assistance Program (VICAP) may experience increased working hours in assisting individuals with LIS application and drug plan selection, and responding to inquiries. State and local agencies that used to provide prescription drug services to "dual eligibles" may be negatively affected because of the transition from Medicaid to Medicare, such as the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and its inpatient and outpatient facilities, the Virginia Association Community Services Boards (VACSB) and local Community Services Boards (CSBs), Virginia Department of Health (VDH) and local health departments.

For the Commonwealth, transition of "dual eligibles" to Medicare Part D will save the state share of costs of prescription drugs. On the other hand, Virginia is required to pay the federal government the state share of the cost of prescription drug coverage for the dual eligibles, with phased-down contribution set at 90% in 2006 and 75% by 2015. The state share of the prescription drug costs is calculated based on per capita costs for the "dual eligibles" in 2003, while DMAS has implemented a number of pharmacy savings initiatives after 2003 that have significantly reduced the Medicaid drug costs. Therefore, the "clawback" far exceeds the saved cost - the cost that would be for Virginia if the state were to continue to provide drug coverage to "dual eligibles"

³ According to the standard drug benefit structure established by the MMA, the average monthly premium in 2006 is \$34. The standard benefit requires payment of a \$250 deductible. The beneficiary then pays 25% of the cost of a covered Part D prescription drug up to an initial coverage limit of \$2250. Once the initial coverage limit is reached, the beneficiary is subject to another deductible, known as the "doughnut hole," in which they must pay the full cost of medicine. When total out-of-pocket expenses on formulary drugs for the year, including the deductible and initial coinsurance, reach \$3600 the beneficiary pays \$2 for a generic or preferred drug and \$5 for other drugs, or 5% coinsurance, whichever is greater. (42 U.S.C.A. §1395w-102(b)).

⁴ The clawback is calculated based on the 2003 cost of prescription drug coverage. The Phased-Down State Contribution is set at 90% of costs for 2006 and decreases to 75% by 2015.

⁵ The MMA established Low-Income Subsidy that will pay the premium, deductible, and part of the cost sharing under Part D.

⁶ According to 12 VAC 30-50-35 and 12 VAC 30-50-75, these drugs include barbiturates, benzodiazepines, nonprescription drugs, prescription vitamins and minerals, drugs for the symptomatic relief of coughs and colds, and drugs for anorexia, weight loss, and weight gain.

⁷ For example, the Inspector General of the Department of Health and Human Services has determined that nearly one-third of dually eligible beneficiaries

were assigned to drug plans that included less than 85% of the 178 most commonly used Part D drugs. Some of the drugs excluded from a substantial number of plan formularies (lists of covered drugs) are drugs for high blood pressure, high cholesterol and pain relief. (Source: <http://www.medicareadvocacy.org>)

⁸ Pharmacies will benefit from the Medicare Part D Program with wider access to elderly patients.

⁹ According to DMAS, these administrative costs will be shared by the federal government, as other costs under Medicaid.

through Medicaid. DMAS has worked with Centers for Medicare & Medicaid Services to reduce the impact of "clawback" payments. Currently the estimated net cost for Virginia is approximately \$16.5 million in FY 2007 and \$19.3 million in FY 2008. It needs to point out that these costs are not direct impact of the proposed regulation, but rather the impact of the "clawback" as mandated by the MMA.

Businesses and entities affected. Dual eligibles will have their prescription drug covered under Medicare Part D instead of Medicaid. They will have to select from a number of Medicare-approved private prescription drug plans, or be auto-assigned to one, which may or may not include all of their needed medications in the plan's formulary. Also, they will have to pay the minimum required co-payments for prescriptions, while previously they could not be forced to pay co-insurance if they could not afford it. According to DMAS, currently there are 140,000 Medicaid enrollees who are eligible for Medicare.

Pharmacies may be slightly affected by the proposed regulations because now they may refuse to fill the prescription if the individual cannot afford the co-payments. Currently there are 1,594 licensed pharmacies in Virginia, including the chain drug stores.

The proposed regulation will increase administrative costs and working hours for DMAS, LDSS, VDA, local Area Agencies on Aging or VICAP. According to DMAS, currently Virginia has 120 LDSS, 25 local Area Agencies on Aging or VICAP. Agencies that used to provide prescription drug services to "dual eligibles" may be negatively affected because of the transition from Medicaid to Medicare, such as DMHMRSAS, VACSB and local CSBs, VDH and local health departments. According to DMAS, currently there are 40 CSBs, and 227 administrative and health department offices.

Although the "clawback" is not intended to impose additional costs to states, Virginia will incur a net cost of \$16.5 million in FY 2007 and \$19.3 million in FY 2008 because post-2003 cost savings are not recognized in calculating the "clawback."

Localities particularly affected. The proposed regulation affects localities throughout the Commonwealth.

Projected impact on employment. The proposed regulation will have a slight positive effect on pharmacies and will likely not have any direct impact on employment.

Effects on the use and value of private property. The proposed regulation will likely not have any significant impact on the use and value of private property.

Small businesses: costs and other effects. The proposed regulations may have a slight positive effect on pharmacies. Currently there are 1,594 licensed pharmacies in Virginia including the chain drug stores. The exact number of small businesses is not known.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations may have a slight positive effect on pharmacies.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Groups Covered, and Agencies Responsible for Eligibility Determinations; Eligibility Conditions and Requirements; Amount, Duration and Scope of Medical and Remedial Services: Revisions to Appeals Regulations as a Result of a Periodic Review: Medicare Part D (12 VAC 30-30-60, 12 VAC 30-40-10, 12 VAC 30-50-35, 12 VAC 30-50-75 and 12 VAC 30-50-530). The agency raises no issues with the analysis prepared by the Department of Planning and Budget.

Summary:

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) established the Medicare Prescription Drug Program, also known as Medicare Part D, making prescription drug coverage available to individuals who are entitled to receive Medicare benefits under Part A or Part B, beginning on January 1, 2006. In response to this federal mandate the 2005 General Assembly mandated that the Medicaid Agency promulgate "necessary regulations to implement the provisions of the Medicare Part D prescription drug benefit" and required DMAS to promulgate such regulations within 280 days of the enactment of Chapters 24 and 56 of the 2005 Acts of Assembly.

12 VAC 30-30-60. Requirements relating to determining eligibility for Medicare Prescription Drug Low-Income Subsidy.

The agency provides for making Medicare Prescription Drug Low-Income Subsidy determinations under § 1935(a) of the Social Security Act;

- 1. The agency makes determinations of eligibility for premium and cost-sharing subsidies under and in accordance with § 1860 D 14 of the Social Security Act;*

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a. The Social Security Administration's subsidy application (SSA-1020) will be used as the official application form for individuals to request that the state determine eligibility for the Low-Income Subsidy.

b. The application must be filed at the local department of social services in the city or county where the applicant resides. A face-to-face interview is not required.

c. The applicant may be represented by an individual who is authorized to act on behalf of the applicant; if the applicant is incapacitated or incompetent, someone acting responsibly on his behalf; or an individual of the applicant's choice who is requested by the applicant to act as his representative in the application process. The person acting responsibly on behalf of, or acting as the representative of the applicant is required to attest to the accuracy of the information on the application.

d. Applications must be acted on within 45 days from the date the application is received by the local department of social services. A determination of eligibility or ineligibility must be made and the applicant must be sent written notice of his approval or denial of assistance under the Low-Income Subsidy program as well as the reasons for such findings.

e. Redeterminations of eligibility must be made in the same manner and frequency as redeterminations are required under the state's Medicaid State Plan.

f. Family size. The following persons are counted in the family size: the applicant; the applicant's spouse, if living with the applicant; and any persons who are related by blood, marriage or adoption, who are living with the applicant and spouse and who are dependent on the applicant or spouse for at least one-half of their financial support.

g. Financial requirements. Regulations at 20 CFR 416 Subparts K and L are used to evaluate income and resources for subsidy eligibility. Current SSI policy can be found in the online Program Operations Manual System (POMS) at <http://policy.ssa.gov/poms.nsf/aboutpoms>. Less restrictive rules the state uses for Medicaid determinations are not used for the Low-Income Subsidy determination.

h. The subsidy applicant may appeal his Low-Income Subsidy determination according to the appeal procedures found in the state's Medicaid State Plan.

2. The agency provides for informing the secretary of such determinations in cases in which such eligibility is established or redetermined;

3. The agency provides for screening of individuals for Medicare cost-sharing described in § 1905(p)(3) of the Act and offering enrollment to eligible individuals under the state plan or under a waiver of the state plan.

12 VAC 30-40-10. General conditions of eligibility.

Each individual covered under the plan:

1. Is financially eligible (using the methods and standards described in Parts II and III of this chapter) to receive services.

2. Meets the applicable nonfinancial eligibility conditions.

a. For the categorically needy:

(i) Except as specified under items (ii) and (iii) below, for AFDC-related individuals, meets the nonfinancial eligibility conditions of the AFDC program.

(ii) For SSI-related individuals, meets the nonfinancial criteria of the SSI program or more restrictive SSI-related categorically needy criteria.

(iii) For financially eligible pregnant women, infants or children covered under § 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX) of the Act, meets the nonfinancial criteria of § 1902(l) of the Act.

(iv) For financially eligible aged and disabled individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act, meets the nonfinancial criteria of § 1902(m) of the Act.

b. For the medically needy, meets the nonfinancial eligibility conditions of 42 CFR 435.

c. For financially eligible qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, meets the nonfinancial criteria of § 1905(p) of the Act.

d. For financially eligible qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, meets the nonfinancial criteria of § 1905(s).

3. Is residing in the United States and:

a. Is a citizen; or

b. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States prior to August 22, 1996;

c. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States on or after August 22, 1996, and whose coverage is mandated by Public Law 104-193;

d. Is an alien who is not a qualified alien, or who is a qualified alien who arrived in the United States on or after August 22, 1996, whose coverage is not mandated by Public Law 104-193 (coverage must be restricted to certain emergency services).

4. Is a resident of the state, regardless of whether or not the individual maintains the residence permanently or maintains it a fixed address.

The state has open agreement(s).

5. Is not an inmate of a public institution. Public institutions do not include medical institutions, nursing facilities and intermediate care facilities for the mentally retarded, or publicly operated community residences that serve no more than 16 residents, or certain child care institutions.

6. Is required, as a condition of eligibility, to assign rights to medical support and to payments for medical care from any third party, to cooperate in obtaining such support and payments, and to cooperate in identifying and providing information to assist in pursuing any liable third party. The assignment of rights obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid. The requirements of 42 CFR 433.146 through 433.148 are met.

An applicant or recipient must also cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself or herself and any other person who is eligible for Medicaid and on whose behalf the individual can make an assignment; except that individuals described in § 1902(1)(1)(A) of the Social Security Act (pregnant women and women in the post-partum period) are exempt from these requirements involving paternity and obtaining support. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

An applicant or recipient must also cooperate in identifying any third party who may be liable to pay for care that is covered under the state plan and providing information to assist in pursuing these third parties. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

7. Is required, as a condition of eligibility, to furnish his social security account number (or numbers, if he has more than one number) except for aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) of the Social Security Act (§ 1137(f)).

8. Is not required to apply for AFDC benefits under Title IV-A as a condition of applying for, or receiving Medicaid if the individual is a pregnant women, infant, or child that the state elects to cover under § 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

9. Is not required, as an individual child or pregnant woman, to meet requirements under § 402(a)(43) of the Act to be in certain living arrangements. (Prior to terminating AFDC individuals who do not meet such requirements under a state's AFDC plan, the agency determines if they are otherwise eligible under the state's Medicaid plan.)

10. Is required to apply for enrollment in an employer-based cost-effective group health plan (as determined by the state agency), if such plan is available to the individual. Enrollment is a condition of eligibility except for the individual who is unable to enroll on his own behalf (failure of a parent to enroll a child does not affect a child's eligibility).

11. Is required to apply for coverage under Medicare A, B and/or D if it is likely that the individual would meet the eligibility criteria for any or all of those programs. The state agrees to pay any applicable premiums and cost-sharing (except those applicable under Part D) for individuals required to apply for Medicare. Application for Medicare is a condition of eligibility unless the state does not pay the Medicare premiums, deductibles or co-insurance (except

those applicable under Part D) for persons covered by the Medicaid eligibility group under which the individual is applying.

12 VAC 30-50-35. Requirements relating to payment for covered outpatient drugs for the categorically needy.

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

1. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit-Part D. The following excluded drugs are covered:

- a. Agents when used for anorexia, weight loss, weight gain (see specific drug categories in subsection B of this section);
- b. Agents when used for the symptomatic relief cough and colds (see specific drug categories in subsection B of this section);
- c. Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section);
- d. Nonprescription drugs (see specific drug categories in subsection B of this section);
- e. Barbiturates (see specific drug categories in subsection B of this section); and
- f. Benzodiazepines (see specific drug categories in subsection B of this section).

B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12 VAC 30-50-520.

12 VAC 30-50-75. Requirements relating to payment for covered outpatient drugs for the medically needy.

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

1. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit Part D. The following excluded drugs are covered:

- a. Agents when used for anorexia, weight loss, weight gain (see specific drug categories in subsection B of this section);
- b. Agents when used for the symptomatic relief cough and colds (see specific drug categories in subsection B of this section);

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c. *Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section);*

d. *Nonprescription drugs (see specific drug categories in subsection B of this section);*

e. *Barbiturates (see specific drug categories in subsection B of this section); and*

f. *Benzodiazepines (see specific drug categories in subsection B of this section).*

B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12 VAC 30-50-520.

12 VAC 30-50-530. Methods of providing transportation.

A. DMAS will ensure necessary transportation for recipients to and from providers of covered medical services. DMAS shall cover transportation to covered medical services under the following circumstances:

1. Emergency air, ambulance transportation, and all other modes of transportation shall be covered as medical services under 42 CFR 431.53 and any other applicable federal Medicaid regulations. These modes include, but shall not be limited to, nonemergency air travel, nonemergency ground ambulance, stretcher vans, wheelchair vans, common user bus (intra-city and inter-city), volunteer/registered drivers, and taxicabs. DMAS may contract directly with providers of transportation or with brokers of transportation services, or both. DMAS may require that brokers not have a financial interest in transportation providers with whom they contract.

2. Medicaid provided transportation shall only be available when recipients have no other means of transportation available.

3. Recipients shall be furnished transportation services that are the most economical to adequately meet the recipients' medical needs.

4. Ambulances, wheelchair vans, taxicabs, and other modes of transportation must be licensed to provide services in the Commonwealth by the appropriate state or local licensing agency, or both. Volunteer/registered drivers must be licensed to operate a motor vehicle in the Commonwealth and must maintain automobile insurance.

B. DMAS will ensure necessary nonemergency transportation for full-benefit, dual eligible recipients to obtain medically necessary, noncovered Medicare Part D prescription drugs.

VA.R. Doc. No. R06-132; Filed August 2, 2006, 11:26 a.m.

MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Title of Regulation: **12 VAC 35-45. Regulations for Providers of Mental Health, Mental Retardation, Substance Abuse and Brain Injury Residential Services for Children (amending 12 VAC 35-45-10, 12 VAC 35-45-70, 12 VAC 35-45-80; adding 12 VAC 35-45-210).**

Statutory Authority: § 37.2-203 of the Code of Virginia and Chapter 725 of the 2005 Acts of Assembly.

Public Hearing Date: N/A -- Public comments may be submitted until October 23, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or e-mail leslie.anderson@co.dmhmsas.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

Chapter 725 of the 2005 Acts of Assembly authorizes the Department of Mental Health, Mental Retardation and Substance Abuse Services to license providers of services under the Medicaid Brain Injury Waiver and providers of residential services for persons with brain injury.

Purpose: This regulatory action will add provisions to the existing Mental Health Module to enable the department to license providers of residential services for individuals with brain injuries. Virginia does not currently have a Brain Injury Waiver.

In December 2005, the board adopted emergency regulations to implement the provisions of the new legislation. Prior to that, there was no designated licensing authority for residential services serving individuals with brain injuries and some applicants had been denied licensing as a result. This action will allow these services to continue to operate in Virginia. Before this specific licensing authority was implemented, some residential brain injury services were licensed as assisted living facilities by the Department of Social Services. This licensing authority has been or will be transferred to the department.

The agency has developed the regulations in collaboration with the Department of Rehabilitative Services and representatives of various stakeholder groups. The regulation is intended to establish a framework for licensing providers of brain injury services to ensure there is appropriate and consistent oversight, support, and resources to provide an acceptable standard of care for persons who receive services. Prior to this, there has been no single authority responsible for oversight of this residential service. Therefore, this regulatory action is essential to protect the welfare of residents of Virginia with brain injuries and to ensure fair and consistent monitoring of providers of this service.

Substance: Existing definitions have been modified and new definitions have been added to identify providers of brain injury services to be subject to licensing requirements. New definitions include "brain injury" and "neurobehavioral services" to clarify and facilitate the implementation of the new licensing provisions. Provisions have been added to require providers to have policies for children with a diagnosis of brain

injury in a residential service. Neurobehavioral services are added to the list of services that are provided in a residential setting and providers are required to assess the needs of residents with brain injury. The provider staffing requirements are changed to require brain injury service providers to employ or contract with staff with the appropriate credentials to provide brain injury services.

Issues: These regulatory provisions help to ensure that providers of services to children with brain injury maintain an acceptable standard of care by requiring them to comply with specific licensing requirements. The department will monitor such providers to ensure that they are accountable and will be available to provide technical assistance to resolve any deficiencies. This should be advantageous to children with a diagnosis of brain injury and their families and ensure fair and consistent monitoring of services for providers.

The department's existing Office of Licensing will be responsible for licensing children's residential treatment providers of brain injury services in accordance with the new regulations. This is a cost-efficient and effective means to implement the new licensing requirements because this office has the administrative support and experience to perform the required functions. Therefore, these regulations should be advantageous to the department, providers of brain injury services, and the public.

There are no known disadvantages to consumers, providers of services or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed amendments to regulation. Pursuant to Chapter 725 of the 2005 Acts of Assembly, the State Mental Health, Mental Retardation and Substance Abuse Services Board (board) proposes to amend the existing Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children to include provisions for licensing providers of brain injury services. The current regulations provide standards for licensing providers of residential treatment services for children with mental illness, mental retardation or substance use disorders and are an addendum to 22 VAC 42-10-10 et seq., which are core standards governing a wide variety of residential facilities licensed by the Departments of Mental Health, Mental Retardation and Substance Abuse Services (department), Social Services, Education, and Juvenile Justice. The standards in this addendum or "Mental Health Module" as it is operationally called, cover a wide range of residential services from small group homes to large residential treatment facilities. The proposed regulatory action adds a definition of "brain injury" and incorporates brain injury service into the definition of "services" that are governed by these regulations. Several other definitions have been added or revised to encompass brain injury services. The proposed regulations have been revised to require providers of brain injury services to maintain policies and structured programs to reduce or ameliorate the effects of brain injury. The amended regulations also include requirements for the staff and supervision of residential facilities for children with brain injury.

Result of analysis. The benefits likely exceed the costs for all proposed changes.

Estimated economic impact. In December 2005, the board adopted emergency regulations to implement the provisions of Chapter 725 of the 2005 Acts of Assembly, which designate the Department of Mental Health, Mental Retardation and Substance Abuse Services (department) as licensing authority for residential services serving children with brain injuries. Prior to that there was no designated licensing authority for residential services serving children with brain injuries; and some applicants had been denied licensing as a result. Other facilities were licensed as assisted living facilities by the Department of Social Services.¹

According to the department, affected providers are generally small facilities that are medically based; and the requirements that they must meet for insurance or medical standards are similar to the regulatory requirements imposed by the proposed regulations. Also, the department does not believe its paperwork requirements are significantly greater than those of the Department of Social Services. Thus, for most providers the proposed regulations add no significant costs other than those associated with human rights committee membership.

Section 37.2-400 of the Code of Virginia explicitly states that all facilities licensed by the department are subject to the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (the human rights regulations). The human rights regulations require that providers affiliate with a Local Human Rights Committee (LHRC). According to the department LHRC affiliation fees typically range from \$100 to \$250. At least one staff member per provider must attend the LHRC meetings. LHRCs must meet at least four times a year. Some meet monthly. According to the department LHRC meetings typically last two to three hours.

In addition to introducing costs for providers, the required human rights committee membership is beneficial for the public in that it produces due process for complaints, helps protect individual rights, and LHRC oversight may decrease the likelihood that patients are maltreated. The proposed regulations are also beneficial in that the availability of residential services for individuals with brain injuries will likely increase now that there is a clear designated licensing authority.

For patients the benefits of the proposed amendments will likely exceed the costs. There will most likely be additional brain injury services available and the LHRC affiliation requirement may reduce the likelihood of poor treatment. Potential providers who have been unable to obtain licensure due to the absence of a designated licensing authority will clearly be better off by gaining the opportunity to become licensed and operate. Providers who have been able to operate through Department of Social Services licensure may be worse off. These providers will likely encounter new

¹ Source: Department of Mental Health, Mental Retardation and Substance Abuse Services

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competition for patients and will incur additional costs associated with the required LHRC affiliation.

Businesses and entities affected. The department estimates that fewer than five existing facilities will be affected, but that new facilities designed to treat children with brain injuries may be established.

Localities particularly affected. The proposed amendments to the regulations are not expected to disproportionately affect particular localities more than others.

Projected impact on employment. The proposed regulations will most likely have a moderate positive effect on employment. As mentioned earlier, some provider applicants were unable to become licensed while there was no clear licensing authority for residential services serving children with brain injuries. The department expects that a small number of additional facilities will be established in response to the proposed regulations. New facilities will hire new staff.

Effects on the use and value of private property. The proposed regulations will likely increase the use of property for residential services serving children with brain injuries. The value of these properties will likely increase.

Small businesses: costs and other effects. Providers that have been licensed by the Department of Social Services will encounter additional costs by being licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services in regard to required human rights committee membership. All or most providers are small businesses.

Small businesses: alternative method that minimizes adverse impact. Section 37.2-400 of the Code of Virginia explicitly states that all facilities licensed by the department are subject to the human rights regulations. Thus, there is no alternative method that minimizes costs for small businesses available to the board.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed action adds provisions for licensing providers of brain injury services. The proposed amendments (i) add a definition of "brain injury" and incorporate brain injury service into the definition "services" that are governed by these regulations, (ii) add or revise several other definitions to encompass brain injury services, (iii) require providers of brain injury services to maintain policies and structured programs to reduce or ameliorate the effects of brain injury, (iv) add "neurobehavioral service" to the scope of services that may be part of a structured program, and (v) include requirements for the staff and supervision of residential facilities for children with brain injury.

CHAPTER 45.

REGULATIONS FOR PROVIDERS OF MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE, AND BRAIN INJURY RESIDENTIAL SERVICES FOR CHILDREN.

12 VAC 35-45-10. Definitions.

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

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical intervention, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help a resident obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, or social, or cognitive functioning.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities, which provide for support and problem solving. Such interventions take place between provider staff and the resident, families, or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

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

"Medication" means prescribed and over-the-counter drugs.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to a resident by (i) persons legally permitted to administer medications or (ii) the resident at the direction and in the presence of persons legally permitted to administer medications.

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, which affect an individual's ability to function successfully in the community.

"On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, *cognitive*, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, *neurobehavioral services*, and family therapy necessary to treat the child. Active treatment shall be required. The service must provide active treatment or training beginning at admission and it must be related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs, including but not limited to personal care, habilitation or academic educational needs of the resident.

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent a resident receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or

a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the resident in an instance in which there is an imminent risk of a resident harming himself or others, including staff when nonphysical interventions are not viable and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the resident for medical, diagnostic, or surgical purposes and the related post-procedure care processes when the use of such a device is not a standard practice for the resident's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit when the resident does not have the option to remove the device. The device may limit a resident's movement and prevent possible harm to the resident (e.g., bed rail or geri-chair) or it may create a passive barrier to protect the resident (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the resident receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the resident's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent a resident from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:

- a. To intervene in or redirect a potentially dangerous encounter in which the resident may voluntarily move away from the situation or hands-on approach; or
- b. To quickly de-escalate a dangerous situation that could cause harm to the resident or others.

"Serious incident" means:

1. Any accident or injury requiring treatment by a physician;
2. Any illness that requires hospitalization;
3. Any overnight absence from the facility without permission;
4. Any runaway; or
5. Any event that affects, or potentially may affect, the health, safety or welfare of any resident being served by the provider.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

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"Service" or "services" means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to residents with mental illness, mental retardation, or substance addiction or abuse. *Service also means planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.*

"Social skill training" means activities aimed at developing and maintaining interpersonal skills.

"Time out" means assisting a resident to regain emotional control by removing the resident from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

12 VAC 35-45-70. Service description; required elements.

A. The provider shall develop, implement, review and revise its services according to the provider's mission and shall have that information available for public review.

B. Each provider shall have a written service description that accurately describes its structured program of care and treatment consistent with the treatment, habilitation, or training needs of the residential population it serves. Service description elements shall include:

1. The mental health, substance abuse ~~or~~, mental retardation, *or brain injury* population it intends to serve;
2. The mental health, substance abuse ~~or~~, mental retardation, *or brain injury* interventions it will provide;
3. Provider goals;
4. Services provided; and
5. Contract services, if any.

12 VAC 35-45-80. Minimum service requirements.

A. At the time of the admission of any resident, the provider shall identify in writing, the staff member responsible for providing the social services outlined in the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

B. The provider shall have and implement written policies and procedures that address the provision of:

1. Psychiatric care;
2. Family therapy; and
3. Staffing appropriate to the needs and behaviors of the residents served.

C. The provider shall have and implement written policies and procedures for the on-site provision of a structured program of care or treatment of residents with mental illness, mental retardation, ~~or~~ substance abuse, *or brain injury*. The provision, intensity, and frequency of mental health, mental retardation, ~~or~~ substance abuse, *or brain injury* interventions shall be based on the assessed needs of the resident. These

interventions, applicable to the population served, shall include, but are not limited to:

1. Individual counseling;
2. Group counseling;
3. Training in decision making, family and interpersonal skills, problem solving, self-care, social, and independent living skills;
4. Training in functional skills;
5. Assistance with activities of daily living (ADL's);
6. Social skills training in therapeutic recreational activities, e.g., anger management, leisure skills education and development, and community integration;
7. Providing positive behavior supports;
8. Physical, occupational and/or speech therapy; ~~and~~
9. Substance abuse education and counseling; *and*
10. *Neurobehavioral services for individuals with brain injury.*

D. Each provider shall have formal arrangements for the evaluation, assessment, and treatment of the mental health *or brain injury* needs of the resident.

12 VAC 35-45-210. Additional requirements for residential facilities for individuals with brain injury.

A. *The provider of brain injury services shall employ or contact with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized service plans, crises, staff training, and service design.*

B. *Child care staff in brain injury residential services shall have two years experience working with children with disabilities.*

C. *A program director who holds a master's degree in psychology, is a nurse licensed in Virginia, is a rehabilitation professional licensed in Virginia, or is a certified brain injury specialist shall have at least one year of clinical experience working with individuals with brain injury. Program directors who hold a bachelor's degree in the field of institutional management, social work, education, or other allied discipline shall have a minimum of two years of experience working with individuals with brain injury.*

VA.R. Doc. No. R06-159; Filed July 27, 2006, 10:38 a.m.

Title of Regulation: **12 VAC 35-45. Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children (adding 12 VAC 35-45-25).**

Statutory Authority: §§ 37.2-203, 37.2-408 and 37.2-418 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 23, 2006.

(See Calendar of Events section)

for additional information)

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or e-mail leslie.anderson@co.dmhmr.sas.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

Sections 37.2-408 and 37.2-418 of the Code of Virginia authorize the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to issue an order of summary suspension of a license to operate a group home or residential facility for children, including homes or facilities licensed under core licensure regulations, in cases of immediate and substantial threat to the health, safety, and welfare of residents.

Purpose: This action inserts provisions in the Mental Health Module to allow the commissioner to suspend the license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety, and welfare of the residents. The regulations provide the basis for the department to act promptly, in accordance with legal protocols, and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license. These provisions also include a requirement for the department to notify the appropriate agencies when the commissioner issues an order of summary suspension so families are informed and that plans can be made to relocate the residents of facilities who are affected by the action.

The board is required to adopt the provisions for issuing an order of summary suspension to comply with Chapter 363 of the 2005 Acts of Assembly. The provisions provide the authority for the commissioner to address egregious circumstances while ensuring due process for licensees.

Substance: These regulations provide the framework to allow the commissioner to suspend the license of a provider to operate a group home or residential facility for children. Regulations include procedures to govern the appointment of a hearing officer, scheduling an administrative hearing, and notification of parties in conjunction with the issuance of an order of summary suspension of the license. The regulations also establish required timeframes and procedures for the conduct of the hearing, decision-making, and any appeal of the decision. The regulations also require the department to notify appropriate agencies when the commissioner issues an order of summary suspension so that relocation plans can be made for residents who are affected by the action taken.

Issues: These provisions are advantageous to the public because they provide additional protections for the health, safety, and welfare of children residing in licensed residential facilities and their families. It allows the commissioner to act promptly to suspend the operation of residential facilities for children when he finds conditions pose an immediate and substantial threat to residents of the facilities. Prior to the

adoption of this legislation and the emergency regulations, no such authority existed. The regulations also include requirements for notification when an order of summary suspension is issued to ensure that plans can be developed for relocation of the facility residents.

These provisions are advantageous to the department because it will enable it to take immediate action to suspend the operation of any residential facility to address egregious circumstances. This action must be taken in conjunction with another administrative proceeding to revoke or deny the license.

The regulations include specific procedures to guide the department in issuing an order of summary suspension to ensure protections for the legal rights of all involved parties.

This regulatory action poses no known disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The State Board of Mental Health, Mental Retardation and Substance Abuse Services Board (board) proposes to add a section to the existing Regulations for Providers of Mental health, Mental Retardation and Substance Abuse Residential Services for Children (12 VAC 35-45). The new section will establish a process for issuing an order of summary suspension of the license.

Results of analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated economic impact. The existing regulations (12 VAC 35-45) provide standards for licensing providers of residential treatment services for children with mental illness, mental retardation or substance use disorders.¹ The board promulgated an emergency regulation in December 2005 that added a new section for issuing an order of summary suspension of the license. In conjunction with any proceeding for revocation, denial, or other action², when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services³ (commissioner) may issue an order of summary suspension of the license to operate a residential facility for children. Now the board proposes a permanent regulation that will replace the emergency regulation.

The proposed regulatory changes allow the commissioner to suspend the license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety, and welfare of the residents, in

¹ Generic standards on children's residential facilities are addressed in Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC 42-10). 12 VAC 35-45 is an addendum to 22 VAC 42-10 and is usually referred to as "Mental Health Module".

² One example is sanction.

³ "Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and substance Abuse Services or his authorized agent.

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conjunction with another proceeding to revoke or deny the license. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) will notify appropriate agencies⁴ of the issuance of the order of summary suspension and the need to develop relocation plans for residents. Parents and guardians will also be informed of the pending action. According to DMHMRSAS, previously the residential facilities could still operate during the pendency of the concurrent revocation, denial, or other proceedings, which caused threat to the safety and health of the residents. This new section provides a basis for DMHMRSAS to act promptly on egregious circumstances and will better protect children residing in the suspect residential facilities. The possibility of cessation of operations may encourage all licensed residential facilities to maintain good conditions and practices. DMHMRSAS may experience reduced staff time and costs because the agency does not need to conduct frequent inspections⁵ on the residential facilities during the pendency of revocation and denial, as it used to.

Residential facilities subject to the proceedings of revocation or denial of license will be forced to cease operations when there is an immediate and substantial threat to the health and safety of the residents, which will reduce their profit. Since not all of the benefits from the proposed regulatory changes can be measured in monetary terms, it is not known whether total benefit exceeds total cost.

Businesses and entities affected. The proposed regulation will provide additional protection for children in the residential facilities that are facing revocation or denial of license. Residential facilities may be forced to cease operations during the pendency of revocation and denial, which will reduce their profit. According to DMHMRSAS, there are 125 residential facilities serving children in the Commonwealth. Up to now, no order of summary suspension has been issued since the emergency regulation took effect. DMHMRSAS may experience a decrease in working time due to the reduced number of inspections needed.

Localities particularly affected. The proposed regulation affects localities throughout the Commonwealth.

Projected impact on employment. Residential facilities that are subject to the proceeding of revocation or denial of license will be forced to cease operations if there is threat to the safety and health of the residents, which will reduce the number of people employed in these facilities.

Effects on the use and value of private property. Cessation of operations for the residential facilities that are facing revocation or denial of license will reduce their profits and, therefore, the value of their property.

Small businesses: costs and other effects. According to DMHMRSAS, all of the 125 residential facilities serving children are small businesses. However, only a few will be affected by the proposed regulation. No order of summary

suspension is issued since the emergency regulation took effect in December 2005.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations allow DMHMRSAS to suspend the license to operate a group home or residential facility during the pendency of revocation or denial if there is an immediate and substantial threat to the health and safety of the children residents. There is no alternative method that could provide similar protection with a lower adverse impact.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments establish procedures for the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to issue an order of summary suspension in cases of immediate and substantial threat to the health, safety, and welfare of residents. These include procedures for scheduling and conducting an administrative hearing when the commissioner issues an order of summary suspension, including the appointment of a hearing officer by the Executive Secretary of the Supreme Court.

12 VAC 35-45-25. Summary suspension.

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner may issue an order of summary suspension of the license to operate a residential facility for children when he believes the operation of the

⁴ Local Departments of Social Services (LDSSs) and *Comprehensive Services Act for At-Risk Youth and Families (CSA)*.

⁵ According to DMHMRSAS, the agency may have to conduct weekly or more frequent inspection to ensure the health and safety of the residents if serious problem is found.

facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the licensee as soon as practicable. The order shall set forth:

- 1. The time, date, and location of the hearing;*
- 2. The procedures for the hearing;*
- 3. The hearing and appeal rights; and*
- 4. Facts and evidence that formed the basis for the order of summary suspension.*

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended, to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the residential facility for children or its designee by personal service or by certified mail, return receipt requested either:

- 1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendation and (ii) notice that the residential facility for children may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or*
- 2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.*

I. The licensee may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.

VA.R. Doc. No. R06-123; Filed July 25, 2006, 12:56 p.m.

Title of Regulation: 12 VAC 35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services (amending 12 VAC 35-105-20, 12 VAC 35-105-30, 12 VAC 35-105-590 and 12 VAC 35-105-660).

Statutory Authority: § 37.2-203 of the Code of Virginia and Chapter 725 of the 2005 Acts of Assembly.

Public Hearing Date: N/A -- Public comments may be submitted until October 23, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or e-mail leslie.anderson@co.dmhmr.sas.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

Chapter 725 of the 2005 Acts of Assembly authorizes the Department of Mental Health, Mental Retardation and Substance Abuse Services to license providers of services under the Medicaid Brain Injury Waiver and providers of residential services for persons with brain injury.

Purpose: This regulatory action will add provisions to the existing licensing regulations to enable the Department of Mental Health, Mental Retardation and Substance Abuse Services to license providers of residential services for individuals with brain injuries. Virginia does not currently have a Brain Injury Waiver.

In December 2005, the board adopted emergency regulations to implement the provisions of Chapter 725 of the 2005 Acts of Assembly. Prior to that there was no designated licensing authority for residential services serving individuals with brain injuries and some applicants had been denied licensing as a result. This action will allow these services to continue to operate in Virginia. Before this specific licensing authority was implemented, some residential brain injury services were licensed as assisted living facilities by the Department of Social Services. This licensing authority has been or will be transferred to the department.

The agency developed the regulations in collaboration with the Department of Rehabilitative Services and representatives of various stakeholder groups. The regulations are intended to establish a framework for licensing providers of brain injury

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services to ensure appropriate and consistent oversight, support, and resources to provide an acceptable standard of care for persons who receive services. Prior to this, there has been no single authority responsible for oversight of this residential service. Therefore, this regulatory action is essential to protect the welfare of residents of Virginia with brain injuries and to ensure fair and consistent monitoring of providers of this service.

Substance: Existing definitions have been modified and new definitions have been added to identify providers of brain injury services to be subject provisions for licensing. New definitions include "qualified brain injury professional (QBIP)" and "qualified paraprofessional in brain injury (QPPBI)" to identify the specific qualifications necessary for staff positions to provide services to persons with a diagnosis of brain injury.

The provider staffing plan requirements are changed to require that brain injury services be supervised by a QBIP and direct care performed by a QPPBI. There are new requirements for assessment of services plans that are applicable to persons with a diagnosis of brain injury.

Issues: These regulatory provisions help to ensure that providers of services to persons with brain injury maintain an acceptable standard of care by requiring them to comply with specific licensing requirements. The department will monitor such providers to ensure that they are accountable and will be available to provide technical assistance to resolve any deficiencies. This should be advantageous to persons with brain injury and their families and ensure fair and consistent monitoring of services for providers.

The department's existing Office of Licensing will be responsible for licensing providers of brain injury services in accordance with the new regulations. This is a cost-efficient and effective means to implement the new licensing requirements because this office has the administrative support and experience to perform the required functions. Therefore, these regulations should be advantageous to the department, providers of brain injury services, and the public.

There are no known disadvantages to consumers, providers of services or the public

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed amendments to regulation. Pursuant to Chapter 725 of the 2005 Acts of Assembly, the state Mental Health, Mental Retardation and Substance Abuse Services Board (board) proposes to amend the existing rules and regulations for the licensing of providers of mental health, mental retardation and substance abuse services to include provisions for licensing providers of brain injury services. The proposed regulations include a definition of "brain injury" and incorporate brain injury service providers into the definition of service "provider" that is subject to licensing provisions. Several other definitions have been added or revised to encompass the providers of brain injury services. The amended regulation also includes requirements for provider staffing and supervision of brain injury services and adds requirements for the individualized services plan

that address the specific needs individuals receiving brain injury services.¹

Result of analysis. The benefits likely exceed the costs for all proposed changes.

Estimated economic impact. In December 2005, the board adopted emergency regulations to implement the provisions of Chapter 725 of the 2005 Acts of Assembly that designate the Department of Mental Health, Mental Retardation and Substance Abuse Services (department) as licensing authority for residential services serving individuals with brain injuries. Prior to that there was no designated licensing authority for residential services serving individuals with brain injuries; and some applicants had been denied licensing as a result. Other facilities were licensed as assisted living facilities by the Department of Social Services.²

According to the department, affected providers are generally small facilities that are medically based; and the requirements that they must meet for insurance or medical standards are similar to the regulatory requirements imposed by the proposed regulations. Also, the department does not believe its paperwork requirements are significantly greater than those of the Department of Social Services. Thus, for most providers the proposed regulations add no significant costs other than those associated with human rights committee membership.

Section 37.2-400 of the Code of Virginia explicitly states that all facilities licensed by the department are subject to the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (the human rights regulations). The human rights regulations require that providers affiliate with a Local Human Rights Committee (LHRC). According to the department, LHRC affiliation fees typically range from \$100 to \$250. At least one staff member per provider must attend the LHRC meetings. LHRCs must meet at least four times a year. Some meet monthly. According to the department LHRC meetings typically last two to three hours.

In addition to introducing costs for providers, the required human rights committee membership is beneficial for the public in that it produces due process for complaints, helps protect individual rights, and LHRC oversight may decrease the likelihood that patients are maltreated. The proposed regulations are also beneficial in that the availability of residential services for individuals with brain injuries will likely increase now that there is a clear designated licensing authority.

For patients the benefits of the proposed amendments will likely exceed the costs. There will most likely be additional brain injury services available and the LHRC affiliation requirement may reduce the likelihood of poor treatment. Potential providers who have been unable to obtain licensure

¹ The board also proposes to expand the description of providers that are issued licenses include providers offering residential services to persons with brain injury under the Brain Injury Waiver, although presently there currently is no Brain Injury Waiver in Virginia. Thus, this will have no immediate impact.

² Source: Department of Mental Health, Mental Retardation and Substance Abuse Services.

due to the absence of a designated licensing authority will clearly be better off by gaining the opportunity to become licensed and operate. Providers who have been able to operate through Department of Social Services licensure may be worse off. These providers will likely encounter new competition for patients and will incur additional costs associated with the required LHRC affiliation.

Businesses and entities affected. The department estimates that five existing residential facilities will be affected, and that five additional facilities will be established in response to the proposed regulations.

Localities particularly affected. The proposed amendments to the regulations are not expected to disproportionately affect particular localities more than others.

Projected impact on employment. The proposed regulations will most likely have a moderate positive effect on employment. As mentioned earlier, some provider applicants were unable to become licensed while there was no clear licensing authority for residential services serving individuals with brain injuries. The department estimates that five additional facilities will be established in response to the proposed regulations. New facilities will hire new staff.

Effects on the use and value of private property. The proposed regulations will likely increase the use of property for residential services serving individuals with brain injuries. The value of these properties will likely increase.

Small businesses: costs and other effects. Providers that have been licensed by the Department of Social Services will encounter additional costs by being licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services in regard to required human rights committee membership. All or most providers are small businesses.

Small businesses: alternative method that minimizes adverse impact. Section 37.2-400 of the Code of Virginia explicitly states that all facilities licensed by the department are subject to the human rights regulations. Thus, there is no alternative method that minimizes costs for small businesses available to the board.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed action adds provisions for licensing providers of brain injury services. The proposed amendments (i) add a definition of "brain injury" and incorporate brain injury service providers into the definition of service "provider" that is subject to the licensing provisions; (ii) add or revise several other definitions to encompass the providers of brain injury services; (iii) expand the description of providers that are issued licenses to include providers offering residential services to persons with brain injury under the Brain Injury Waiver, although presently there is no Brain Injury Waiver in Virginia; (iv) require provider staffing and supervision of brain injury services; and (v) add requirements for the individualized services plan that address the specific needs of individuals receiving brain injury services.

12 VAC 35-105-20. Definitions.

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

"Abuse" (§ ~~37.1-4~~ 37.2-100 of the Code of Virginia) means any act or failure to act; by an employee or other person responsible for the care of an individual receiving services that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving services. Examples of abuse include, but are not limited to, the following:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice or the person's individual service plan;
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individual service plan.

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"Activities of daily living" or "ADLs" mean personal care activities and include bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service that includes orientation to service goals, rules and requirements, and assignment to appropriate employees.

"Behavior management" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security.

"Behavioral treatment" or "positive behavior support program" means any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following: (i) improved behavioral functioning and effectiveness; (ii) alleviation of the symptoms of psychopathology; or (iii) reduction of serious behaviors. A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help an individual obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, cognitive, or social functioning.

"Case management service" means assisting individuals and their families to access services and supports that are essential to meeting their basic needs identified in their individualized service plan, which include not only accessing needed mental health, mental retardation and substance abuse services, but also any medical, nutritional, social, educational, vocational and employment, housing, economic assistance, transportation, leisure and recreational, legal, and advocacy services and supports that the individual needs to function in a community setting. Maintaining waiting lists for services, case management tracking and periodically contacting individuals for the purpose of determining the potential need for services shall be considered screening and referral and not admission into licensed case management.

"Clubhouse service" means the provision of recovery-oriented psychosocial rehabilitation services in a nonresidential setting on a regular basis not less than two hours per day, five days per week, in which clubhouse members and employees work together in the development and implementation of structured activities involved in the day-to-day operation of the clubhouse facilities and in other social and employment opportunities through skills training, peer support, vocational rehabilitation, and community resource development.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Community gero-psychiatric residential services" means 24-hour nonacute care in conjunction with treatment in a setting that provides less intensive services than a hospital, but more intensive mental health services than a nursing home or group home. Individuals with mental illness, behavioral problems, and concomitant health problems (usually age 65 and older), appropriately treated in a geriatric setting, are provided intense supervision, psychiatric care, behavioral treatment planning, nursing, and other health related services. An Interdisciplinary Services Team assesses the individual and develops the services plan.

"Community intermediate care facility/mental retardation (ICF/MR)" means a service licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services in which care is provided to individuals who have mental retardation or a developmental disability due to brain injury who are not in need of nursing care, but who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities must comply with Title XIX of the Social Security Act standards, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation brought to the attention of the department that a licensed provider violated these regulations.

"Consumer service plan" or "CSP" means that document addressing all needs of recipients of home and community-based care developmental disability services (IFDDS Waiver), in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipient ages, level of functioning, and preferences.

"Corrective action plan" means the provider's pledged corrective action in response to noncompliances documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body (i) through actions such as, but not limited to, striking or

hitting with any part of the body or with an implement; (ii) through pinching, pulling or shaking; or (iii) through any similar action that normally inflicts pain or discomfort.

"Crisis" means a situation in which an individual presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration.

"Crisis stabilization" means direct, intensive intervention to individuals who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service shall include temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that individuals can be maintained in the community during and beyond the crisis period.

"Day support service" means the provision of individualized planned activities, supports, training, supervision, and transportation to individuals with mental retardation or related conditions, *or brain injury*, to improve functioning or maintain an optimal level of functioning. Services may enhance the following skills: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social, medication management, and transportation. Services provide opportunities for peer interaction and community integration. Services may be provided in a facility (center based) or provided out in the community (noncenter based). Services are provided for two or more consecutive hours per day. The term "day support service" does not include services in which the primary function is to provide extended sheltered or competitive employment, supported or transitional employment services, general education services, general recreational services, or outpatient services licensed pursuant to this chapter.

"Day treatment services" means the provision of coordinated, intensive, comprehensive, and multidisciplinary treatment to individuals through a combination of diagnostic, medical, psychiatric, case management, psychosocial rehabilitation, prevocational and educational services. Services are provided for two or more consecutive hours per day.

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

"Discharge" means the process by which the individual's active involvement with a provider is terminated by the provider.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and coordinates planning for aftercare services.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means mental health, mental retardation or substance abuse services available 24 hours a day and seven days per week that provide crisis intervention, stabilization, and referral assistance over the telephone or

face-to-face for individuals seeking services for themselves or others. Emergency services may include walk-ins, home visits, jail interventions, pre-admission screenings, and other activities designed to stabilize an individual within the setting most appropriate to the individual's current condition.

"Group home residential service" means a congregate residential service providing 24-hour supervision in a community-based, home-like dwelling. These services are provided for individuals needing assistance, counseling, and training in activities of daily living or whose service plan identifies the need for the specific type of supervision or counseling available in this setting.

"Home and noncenter based" means that a service is provided in the home or other noncenter-based setting. This includes but is not limited to noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"Individual" or "individual receiving services" means a person receiving care or treatment or other services from a provider licensed under this chapter whether that person is referred to as a patient, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving services of the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual.

"Inpatient psychiatric service" means a 24-hour intensive medical, nursing care and treatment provided for individuals with mental illness or problems with substance abuse in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living (~~IADL~~)" or "~~IADLs~~" means ~~social tasks (e.g., meal preparation, shopping, housekeeping, laundry, and money management)~~ *meal preparation, housekeeping, laundry, and managing money.* ~~An individual's~~ *A person's* degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

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The individuals to be served by ICT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including such individuals who also have a diagnosis of mental retardation. Services are usually time limited provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. These services include crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and emergency response.

"Intensive outpatient service" means treatment provided in a concentrated manner (involving multiple outpatient visits per week) over a period of time for individuals requiring stabilization. These services usually include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding a violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report or other information that comes to the attention of the department.

"Legally authorized representative" means a person permitted by law to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, or certification as a psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility, under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the

direction and in the presence of persons legally permitted to administer medications.

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

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented psychosocial rehabilitation services to individuals with long-term, severe psychiatric disabilities including skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in their individualized service plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS Services are provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, 1994, that affects the well-being or behavior of an individual.

"Neglect" means the failure by an individual or provider responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse (§ 37.1-4 37.2-100 of the Code of Virginia). This definition of neglect also applies to individuals receiving in-home support, crisis stabilization, and day support under the IFDDS or *Brain Injury Waiver and individuals receiving residential brain injury services*.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Opioid treatment service" means an intervention strategy that combines treatment with the administering or dispensing of opioid agonist treatment medication. An individual-specific,

physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment.

"Outpatient service" means a variety of treatment interventions generally provided to individuals, groups or families on an hourly schedule in a clinic or similar facility or in another location. Outpatient services include, but are not limited to, emergency services, crisis intervention services, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services. "Outpatient service" specifically includes:

1. Services operated by a community services board established pursuant to Chapter 40-5 (~~§ 37.1-194~~ § 37.2-500 et seq.) of Title ~~37.1~~ 37.2 of the Code of Virginia;
2. Services funded wholly or in part, directly or indirectly, by a community services board established pursuant to Chapter 40 5 (~~§ 37.1-194~~ § 37.2-500 et seq.) of Title ~~37.1~~ 37.2 of the Code of Virginia; or
3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means the provision within a medically supervised setting of day treatment services that are time-limited active treatment interventions, more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by PACT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that ~~provides~~ delivers (i) services to individuals ~~persons~~ with mental illness, mental retardation, or substance addiction or abuse including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled

~~drug methadone or other opioid replacements or provides in-home support, crisis stabilization, or day support under; (ii) services to persons who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver; (iii) services to individuals under the Brain Injury Waiver; or (iv) residential services for persons with brain injury. Such~~ The person, entity or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board ~~as defined in § 37.1-194.1 of the Code of Virginia~~, behavioral health authority ~~as defined in § 37.1-243 of the Code of Virginia~~, private provider, and any other similar or related person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia. ~~It does not include any person providing uncompensated services to a family member.~~

"Psychosocial rehabilitation service" means care or treatment for individuals with long-term, severe psychiatric disabilities, which is designed to improve their quality of life by assisting them to assume responsibility over their lives and to function as actively and independently in society as possible, through the strengthening of individual skills and the development of environmental supports necessary to sustain community living. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified Brain Injury Professional (QBIP)" means a clinician in the health professions who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: a person with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: a person with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college, with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) certified brain injury specialist; (vi) registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

"Qualified Developmental Disabilities Professional (QDDP)" means an individual possessing at least one year of documented experience working directly with individuals who have related conditions and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified Mental Health Professional (QMHP)" means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services

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to individuals who have a psychiatric diagnosis; including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: an individual with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (vi) registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience; or (vii) any other licensed mental health professional.

"Qualified Mental Retardation Professional (QMRP)" means an individual possessing at least one year of documented experience working directly with individuals who have mental retardation or other developmental disabilities and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or holds at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology.

"Qualified Paraprofessional in Brain Injury (QPPBI)" means an individual with at least a high school diploma and two years experience working with individuals with disabilities.

"Qualified Paraprofessional in Mental Health (QPPMH)" means an individual who must, at a minimum, meet one of the following criteria: (i) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) an Associate's Degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to persons with a diagnosis of mental illness; or (iii) a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Related conditions" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. Attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental

retardation, and requires treatment or services similar to those required for these persons;

2. Manifested before the person reaches age 22;
3. Likely to continue indefinitely; and
4. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - a. Self-care;
 - b. Understanding and use of language;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction; or
 - f. Capacity for independent living.

"Residential crisis stabilization service" means providing short-term, intensive treatment to individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit.

"Residential service" means a category of service providing 24-hour care in conjunction with care and treatment or a training program in a setting other than a hospital. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include, but are not limited to: residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, *neurobehavioral services*, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health ~~or~~, substance abuse ~~treatment~~, or *neurobehavioral* service in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Individuals providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or in a sponsored residential home.

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent an individual receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance in which there

is an imminent risk of an individual harming himself or others, including staff; when nonphysical interventions are not viable; and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes and the related post-procedure care processes, when the use of such a device is not a standard practice for the individual's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit, when the individual does not have the option to remove the device. The device may limit an individual's movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the individual's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes: (i) to intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands-on approach or (ii) to quickly de-escalate a dangerous situation that could cause harm to the individual or others.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the preliminary assessment of an individual's appropriateness for admission or readmission to a service.

"Seclusion" means the involuntary placement of an individual receiving services alone, in a locked room or secured area from which he is physically prevented from leaving.

"Serious injury" means any injury resulting in bodily hurt, damage, harm or loss that requires medical attention by a licensed physician.

"Service" or "services" means ~~individually~~ (i) planned *individualized* interventions intended to reduce or ameliorate mental illness, mental retardation or substance ~~addiction or~~ abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to individuals

with mental illness, mental retardation, or substance ~~addiction or~~ abuse. ~~Service also means in-home support, day support, and crisis stabilization services provided to individuals under the IFDDS Waiver.~~ Services include *outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community geropsychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services;* (ii) *day support, in home support, and crisis stabilization services provided to individuals under the IFDDS Waiver;* and (iii) *planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.*

"Shall" means an obligation to act is imposed.

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

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the natural process of withdrawal from excessive use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise and provide programmatic, financial, and service support to families or individuals (sponsors) providing care or treatment in their own homes.

"State authority" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. This is the agency designated by the Governor to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse" means the use, without compelling medical reason, of alcohol and other drugs which results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the

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individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals. Services strengthen individual skills and provide environmental supports necessary to attain and sustain independent community residential living. They include, but are not limited to, drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Time out" means assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12 VAC 35-105-30. Licenses.

A. Licenses are issued to providers who offer services to one or a combination of the ~~four~~ following disability groups: persons with mental illness, persons with mental retardation, persons with substance addiction or abuse problems, ~~or~~ persons with related conditions served under the IFDDS Waiver, or persons with brain injury served under the Brain Injury Waiver or in a residential service.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;
2. Clubhouse;
3. Community gero-psychiatric residential;
4. Community intermediate care facility-MR;
5. Crisis stabilization (residential and nonresidential);
6. Day support;
7. Day treatment;
8. Group home residential;
9. Inpatient psychiatric;
10. Intensive Community Treatment (ICT);
11. Intensive in-home;
12. Intensive outpatient;
13. Medical detoxification;
14. Mental health community support;
15. Opioid treatment;
16. Outpatient;

17. Partial hospitalization;
18. Program of assertive community treatment (PACT);
19. Psychosocial rehabilitation;
20. Residential treatment;
21. Respite;
22. Social detoxification;
23. Sponsored residential home;
24. Substance abuse residential treatment for women with children;
25. Supervised living; and
26. Supportive in-home.

C. A license addendum describes the services licensed, the population served, specific locations where services are provided or organized and the terms, and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of beds each location may serve.

12 VAC 35-105-590. Provider staffing plan.

A. The provider shall design and implement a staffing plan including the type and role of employees and contractors that reflects the:

1. Needs of the population served;
2. Types of services offered;
3. The service description; and
4. The number of people served.

B. The provider shall develop a transition staffing plan for new services, added locations, and changes in capacity.

C. The following staffing requirements relate to supervision.

1. The provider shall describe how employees, volunteers, contractors and student interns are to be supervised in the staffing plan.
2. Supervision of employees, volunteers, contractors and student interns shall be provided by persons who have experience in working with the population served and in providing the services outlined in the service description. In addition, supervision of mental health services shall be performed by a QMHP and supervision of mental retardation services shall be performed by a QMRP or an employee or contractor with experience equivalent to the educational requirement. Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or contractor with equivalent experience. *Supervision of Brain Injury Waiver services or residential services shall be performed by a QBIP or an employee or contractor with equivalent experience.*
3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans. This responsibility may be delegated to an employee or contractor who is a QMHP, QMRP, or QDDP, or QBIP or who has equivalent experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs, speech, language or hearing problems or other needs where specialized training is necessary.

E. The provider of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff in brain injury services shall meet the qualifications of a QPPBI and successfully complete an approved training curriculum on brain injuries within six months of employment.

12 VAC 35-105-660. Individualized services plan (ISP).

A. The provider shall develop a preliminary individualized services plan for the first 30 days. The preliminary individualized services plan shall be developed and implemented within 24 hours of admission and shall continue in effect until the individualized services plan is developed or the individual is discharged, whichever comes first.

B. The provider shall develop an individualized services plan for each individual as soon as possible after admission but no later than 30 days after admission. Providers of short-term services must develop and implement a policy to develop individualized services plans within a time frame consistent with the expected length of stay of individuals. Services requiring longer term assessments may include the completion of those as part of the individualized services plan as long as all appropriate services are incorporated into the individualized services plan based on the assessment completed within 30 days of admission and the individualized services plan is updated upon the completion of assessment.

C. The individualized services plan shall address:

1. The individual's needs and preferences.
2. Relevant psychological, behavioral, medical, rehabilitation and nursing needs as indicated by the assessment;
3. Individualized strategies, including the intensity of services needed;
4. A communication plan for individuals with communication barriers, including language barriers; and
5. The behavior treatment plan, if applicable.

D. The provider shall comply with the human rights regulations in regard to participation in decision-making by the individual or legally authorized representative in developing or revising the individualized services plan.

E. The provider shall involve family members, guardian, or others, if appropriate, in developing, reviewing, or revising, at least annually, the individualized service plans consistent with laws protecting confidentiality, privacy, the human rights of individuals receiving services (see 12 VAC 35-115-60) and the rights of minors.

F. Employees or contractors responsible for implementation of an individualized services plan shall demonstrate a working knowledge of the plan's goals, objectives and strategies.

G. The provider shall designate a person who will develop and implement individualized service plans.

H. The provider shall implement the individualized services plan and review it at least every three months or whenever there is a revised assessment. These reviews shall evaluate the individual's progress toward meeting the plan's objectives. The goals, objectives and strategies of the individualized services plan shall be updated, if indicated.

I. The individualized service plan shall be consistent with the CSP for individuals served by the IFDDS Waiver.

J. In brain injury services, the individualized services plan shall be reassessed and revised more frequently than annually, consistent with the individual's course of recovery.

VA.R. Doc. No. R06-161; Filed July 27, 2006, 10:40 a.m.

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Title of Regulation: 12 VAC 35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services (adding 12 VAC 35-105-925).

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public Hearing Dates: September 19, 2006 - 2 p.m. (Glen Allen)

October 3, 2006 - 10 a.m. (Wytheville)

Public comments may be submitted until October 23, 2006. (See Calendar of Events section for additional information)

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or e-mail leslie.anderson@co.dmhmrzas.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

Chapter 7 of the 2005 Acts of Assembly requires the State Mental Health, Mental Retardation and Substance Abuse Services Board to establish standards to evaluate the need and appropriateness for the issuance of new licenses to providers of treatment for persons with opiate addiction.

Purpose: In December 2005, the agency adopted emergency regulations to establish standards for issuance of new

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licenses to providers of treatment for persons with opioid addiction. This action was necessary to comply with Chapter 7 of the 2005 Acts of Assembly and to ensure that decisions to license new providers were rational based on the specific considerations established by the legislation. The agency is now taking action to adopt these standards on a permanent basis. The regulations are intended to ensure that essential services are available to persons who need them and that new providers are responsive to the needs of the population.

These standards for new providers are considered essential to protect the health, safety, and welfare of individuals who receive services. They provide a framework to ensure that new providers have the necessary resources and support to provide an acceptable standard of treatment. These standards also were developed to consider the diverse needs and varying circumstances of localities in Virginia where the new service is provided.

Substance: This action provides standards to evaluate the need and appropriateness for the issuance of new licenses to providers of treatment for persons with opiate addiction through the use of methadone or other opioid replacements. These standards include criteria for (i) determining need for new providers by considering (a) the number of persons residing in the service area who are known or reasonably estimated to be in need of this treatment, (b) the availability or relevant staff in the service area, and (c) the suitability of the building or space to be used to provide the service; (ii) assessing the availability of counseling or other services necessary for effective treatment of persons with opiate addiction; (iii) reviewing existing access to such treatment, including through physicians' offices; (iv) evaluating the reasonable parameters, both geographic and demographic of a clinic's service area; and (v) reviewing the proposed clinic's plan of operation, including security and accountability measures.

Issues: This regulatory action is intended to promote the quality of services and provide accountability to the public. These standards provide a means for regulatory oversight consistent with population needs in Virginia localities. The department will monitor such providers and be available to provide technical assistance to resolve any deficiencies. The standards also provide a means to ensure that providers have necessary support and financial resources to provide a satisfactory standard of care.

The department's existing Office of Licensing is responsible for applying the new standards and licensing service providers in accordance with the regulations. This is a cost efficient and effective means to implement the new licensing requirements because this office has the administrative support and experience to perform the required functions. Therefore, these regulations should be advantageous to the department, providers of opioid addiction services, and the public.

This action poses no known disadvantages to the public or the Commonwealth. The agency developed the proposed amendment in collaboration with consumers, providers and local government officials from various localities throughout Virginia through a series of public hearings and meetings. The groups assisted the agency to draft reasonable effective

standards to implement the statutory requirements pursuant to Chapter 7 of the 2005 Acts of Assembly.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The proposed regulations will establish criteria for need determination for new opioid addiction treatment providers as mandated by Chapter 7 of the 2005 Acts of Assembly. The proposed regulations have been already in effect since December 2005 under emergency regulations.

Result of analysis. The costs likely exceed the benefits for the proposed changes.

Estimated economic impact. The proposed regulations will establish specific standards in order to evaluate the need and appropriateness for the issuance of new licenses for providers of treatment of persons with opioid addiction through the use of methadone or other opioid replacements.

Opioid addiction may be caused by illegal or legal use of opiates that include opium, morphine, heroin, and codeine. Some of the opiates may be synthetic (manmade) such as methadone, Demerol®, and Dilaudid®. Among these, the most commonly abused opiate is heroin. Among the treatments of opioid addiction are medical withdrawal, counseling, psychotherapy, use of nonaddictive drugs, and the use of opiate replacements. The use of opiate replacements, particularly the methadone treatment, is probably the most common form of the treatment utilized for opiate addiction. Methadone treatment provides medically prescribed methadone to relieve withdrawal symptoms, reduce opiate craving, and allow normalization of the body's function in addition to providing health, social, and rehabilitation services. The literature indicates that this method has been in use effectively for over 35 years.

The proposed need determination will apply to new facilities wishing to start providing opiate treatment services. Currently, licensed 19 clinics are not subject to the need determination, but may be affected slightly by some of the facility standards included in the proposed regulations. Thus, the main economic impact of the proposed regulations will be on the new opiate treatment facilities seeking a license from the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS).

The proposed criteria to evaluate the need and appropriateness appear to be quite lenient given the statutory mandate. Under the proposed rules, an applicant could demonstrate need for treatment services by using a variety of demographic data in a geographic area chosen. The only limitations to the geographic area are that it must be located entirely in Virginia and it must not exceed more than 100 miles from the proposed location of service. The criteria that may be used in demonstrating need may include the number of persons on waiting lists for opioid treatment, number of opioid disorder cases, estimated future use of opioid treatment, data for opioid-related suicidal and accidental deaths, data for opioid-related arrests, data for opioid-related communicable diseases, data for availability of alternate treatments, and letters of support from, citizens, governmental officials, or health care providers.

Collection of the data for need determination may create some administrative costs to potential providers if they would not otherwise collect this type of data. However, most of the information that could be used for need determination appears to be what a rational entrepreneur would be interested in in order to determine the economic viability of an opioid treatment enterprise. In other words, most of this data could and may already be used to do a market analysis. Thus, if the data supports starting up a business it is likely that it would also help pass the need determination. In this sense, for areas where there are no existing providers, the economic impact of the proposed need criteria is expected to be minimal.

However, for areas with existing providers the need determination may create a significant barrier to market entry. For example, if the need criteria support a facility of a certain size in a geographic area, a new applicant wishing to compete in the same market may be prevented from doing so based on the grounds that the need in the area is already met by the existing provider. Thus, the proposed need determination may create an artificial barrier for entry into a geographic market.

Barriers to entry have significant economic consequences as they affect the long-term dynamics of a market and consequently the market structure. It is well established in economics that a barrier to entry provides protection to firms already in the market and enables them to charge prices higher than the prices that would result in a competitive market by restricting supply. Also, firms with market power are able to extract more of the consumer welfare for their own benefit. Finally, lack of competition results in efficiency losses known as "deadweight losses" that nobody in an economy receives. In short, the criteria for need determination is expected to result in higher prices for opioid treatment, lower quantity of services utilized, transfer of economic welfare from consumers to providers, and waste of economic resources in terms of "deadweight losses."

Limited supply of opioid treatment is likely to create additional economic losses. There is a substantial body of research literature strongly and consistently indicating that the economic benefits of substance abuse treatment is significantly greater than the costs¹. The primary benefits stem from reduced crime including incarceration and victimization costs, posttreatment reduction in healthcare costs, reduction in risk of HIV/AIDS, increased productivity and employment, and increased social functioning. Thus, likely limiting of supply by existing providers in the absence of competitive market pressures is likely to add to the costs of the proposed need determination in terms of forgone reductions in crime and forgone increases in health outcomes and social functioning as well as productivity and employment.

Finally, adding a barrier to entry into opioid treatment market may be particularly damaging access to services because of the stigma surrounding the opioid treatments.

Businesses and entities affected. The substantive provisions of the proposed regulations apply to opioid treatment providers seeking a license. DMHMRSAS received three

applications since December 1, 2005, and is aware of two more applications that are likely to be submitted in the near future. Some of the facility standards also apply to 19 existing opioid treatment facilities. Furthermore, the opioid treatment facilities provide services approximately 4,000 consumers a day who are likely to be affected indirectly.

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

Projected impact on employment. The proposed regulations are expected to have adverse effects on demand for labor as new facilities wishing to enter a geographic market where there is an existing provider may not be able to pass the need determination and as existing providers shielded from competition by a barrier to entry have incentives to limit the quantity of services offered for profit maximization.

Effects on the use and value of private property. The proposed regulations are expected to add value to the asset value of providers with a license to provide opioid treatment services as they will be able to charge higher prices and extract more of the consumer welfare for their benefit relative to firms in competitive markets. On the other hand, firms currently planning to enter into a geographic market with existing providers may experience a loss in their asset values as a result of forgone market share.

Small businesses: costs and other effects. According to DMHMRSAS, all of the providers are small businesses. As discussed, the proposed need determination is expected to create a barrier to entry into a geographic area if there are existing providers. The small businesses with a license to provide opioid treatment are likely to benefit from the proposed regulations in terms of the reduced chance for competition.

Small businesses: alternative method that minimizes adverse impact. The alternative method that minimizes the adverse impact on businesses would be not promulgating the proposed regulations. However, given the statutory mandate for the need determination, this option does not appear to be feasible.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for

¹ Belenko, S., N. Patapis, M. T. French, February 2005, "Economic Benefits of Drug Treatment: A critical Review of the Evidence for Policy Makers," Treatment Research Institute, University of Pennsylvania.

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preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the recommendation of the Department of Planning and Budget concerning this proposal.

Summary:

The proposed amendments provide specific standards for evaluating the need and appropriateness for the issuance of new licenses for providers of treatment of persons with opioid addiction through the use of methadone or other opioid replacements. As required by Chapter 7 of the 2005 Acts of Assembly, these standards include consideration of demographic and geographic factors, the availability of qualified staff and support services, the suitability of the service site, and several other related attributes of a proposed service provider.

PART VI. ADDITIONAL REQUIREMENTS FOR SELECTED SERVICES.

Article 1. Opioid Treatment Services.

12 VAC 35-105-925. Standards for the evaluation of the need for new licenses for providers of services to persons with opioid addiction.

A. Applicants requesting an initial license to provide a new service for the treatment of opioid addiction through the use of methadone or any other controlled substance shall supply information to demonstrate the need for, and appropriateness of, the proposed service in accordance with this section.

B. Applicants shall demonstrate that the geographic and demographic parameters of the service area are reasonable and the proposed service is expected to serve a sufficient number of individuals to justify the service as documented in subsection D of this section. For purposes of demonstrating need, applicants shall define a service area that is located entirely in Virginia and does not extend more than 100 miles from the proposed location of the service. Applicants also shall identify the number of individuals they seek to be licensed to serve.

C. Applicants shall submit admission policies that give priority to individuals residing in the service area for admission and placement on waiting lists.

D. Applicants shall demonstrate that there are persons residing in their service areas who have an opioid addiction who would benefit from the proposed service. The following information may be used by the applicant to document that individuals in the service area are known or reasonably expected to need the proposed service:

1. Numbers of persons on waiting lists for admission to any existing opioid addiction or other public substance abuse

treatment program in the service area for the most recent available 12-month period;

2. Numbers of opioid use disorder cases (e.g., overdoses) originating from the proposed service area that have been treated in hospital emergency rooms for the most recent available 12-month period;

3. Projections of the number of persons in the service area who are likely to obtain services for opioid addiction, based on drug-use forecasting data;

4. Data reported on suicidal and accidental deaths related to opioid use in the proposed service area for the most recent available 12-month period;

5. Data regarding arrests from local law-enforcement officials in the proposed service area related to illicit opioid activities;

6. Data on communicable diseases for the proposed service area related to injection drug abuse (e.g. HIV, AIDS, TB, and Hepatitis B and C);

7. Data on the availability of any evidence-based alternative service or services that have been proven effective in the treatment of opioid addiction and that are accessible to persons within the proposed service area, including services provided by physicians' offices; and

8. Letters of support from citizens, governmental officials, or health care providers, that indicate that there are conditions or problems associated with substance abuse in the community that demonstrate a need for opioid treatment services in the service area.

E. The department shall determine whether a need exists for the proposed service based on the documentation provided in accordance with subsection D of this section and the consideration of the following standards:

1. Whether there are a sufficient number of persons in the proposed service area who are likely to need the specific opioid treatment service that the applicant intends to provide;

2. Whether the data indicate that evidence-based service capacity in the service area is not responsive to or sufficient enough to meet the needs of individuals with opioid addiction; and

3. Whether there is documentation of support to confirm the need for the proposed service in the proposed service area.

F. The proposed site of the service shall comply with § 37.2-406 of the Code of Virginia and, with the exception of services that are proposed to be located in Planning District 8, shall not be located within one-half mile of a public or private licensed day care center or a public or private K-12 school.

G. In jurisdictions without zoning ordinances, the department shall request that the local governing body advise it as to whether the proposed site is suitable for and compatible with use as an office and the delivery of health care services. The department shall make this request when it notifies the local governing body of a pending application.

H. Applicants shall demonstrate that the building or space to be used to provide the proposed service is suitable for the treatment of opioid addiction by submitting documentation of the following:

1. The proposed site complies with the requirements of the local building regulatory entity;
2. The proposed site complies with local zoning laws or ordinances, including any required business licenses;
3. In the absence of local zoning ordinances, the proposed site is suitable for and compatible with use as offices and the delivery of health care services;
4. In jurisdictions where there are no parking ordinances, the proposed site has sufficient off-street parking to accommodate the needs of the individuals being served and prevent the disruption of traffic flow;
5. The proposed site can accommodate individuals during periods of inclement weather;
6. The proposed site complies with the Virginia Statewide Fire Prevention Code; and
7. The applicant has a written plan to ensure security for storage of methadone at the site, which complies with regulations of the Drug Enforcement Agency (DEA), and the Virginia Board of Pharmacy.

I. Applicants shall submit information to demonstrate that there are sufficient personnel available to meet the following staffing requirements and qualifications:

1. The program director shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board, or eligible for this license or certification with relevant training, experience, or both, in the treatment of persons with opioid addiction;
2. The medical director shall be a board-certified addictionologist or have successfully completed or will complete within one year, a course of study in opiate addiction that is approved by the department;
3. A minimum of one pharmacist;
4. Nurses;
5. Counselors shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board, or eligible for this license or certification; and
6. Personnel to provide support services.

J. Applicants shall submit a description for the proposed service that includes:

1. Proposed mission, philosophy, and goals of the provider;
2. Care, treatment, and services to be provided, including a comprehensive discussion of levels of care provided and alternative treatment strategies offered;
3. Proposed hours and days of operation;
4. Plans for on-site security; and

5. A diversion control plan for dispensed medications, including policies for use of drug screens.

K. Applicants shall, in addition to the requirements of 12 VAC 35-105-580 C 2, provide documentation of their capability to provide the following services and support directly or by arrangement with other specified providers when such services and supports are (i) requested by an individual being served or (ii) identified as an individual need, based on the assessment conducted in accordance with 12 VAC 35-105-60 B and included in the individualized services plan:

1. Psychological services;
2. Social services;
3. Vocational services;
4. Educational services; and
5. Employment services.

L. Applicants shall submit documentation of contact with community services boards or behavioral health authorities in their service areas to discuss its plans for operating in the area and to develop joint agreements, as appropriate.

M. Applicants shall provide policies and procedures that require every six months each individual served to be assessed by the treatment team to determine if that individual is appropriate for safe and voluntary medically supervised withdrawal, alternative therapies including other medication assisted treatments, or continued federally approved pharmacotherapy treatment for opioid addiction.

N. Applicants shall submit policies and procedures describing services they will provide to individuals who wish to discontinue opioid treatment services.

O. Applicants shall provide assurances that the service will have a community liaison responsible for developing and maintaining cooperative relationships with community organizations, other service providers, local law enforcement, local government officials, and the community at large.

P. The department, including the Office of Licensing, Office of Human Rights, or Office of Substance Abuse Services, shall conduct announced and unannounced reviews and complaint investigations, in collaboration with the state methadone authority, Board of Pharmacy, and DEA to determine compliance with the regulations.

VA.R. Doc. No. R06-88; Filed July 27, 2006, 10:41 a.m.

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Title of Regulation: 12 VAC 35-210. Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities (adding 12 VAC 35-210-10 through 12 VAC 35-210-120).

Statutory Authority: §§ 37.2-203 and 37.2-837 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 23, 2006.

(See Calendar of Events section for additional information)

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Agency Contact: Marion Greenfield, Director, Office of Quality Management, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-4516, FAX (804) 786-8623, or e-mail marion.greenfield.@co.dmhmsas.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

Section 37.2-837 of the Code of Virginia provides that the director may grant a trial or home visit to a consumer in accordance with regulations adopted by the board.

Purpose: The agency believes that this regulation is essential to protect the health, safety and welfare of individuals on temporary leave from state facilities. The provisions are intended to promote successful home or community visits that support the treatment and training goals of the individuals receiving services in state facilities. The regulation will help resolve any inconsistencies in decision-making with regard to leave practices and promote accountability and appropriate care for individuals who are on leave status.

Substance: The regulation identifies three types of temporary leave that may be authorized for individuals receiving services in state facilities, including short-term day passes for periods that do not extend overnight, and family or trial visits that are granted for longer time periods. The regulation describes the time limits and rationale for granting each type of leave and requires the facility to plan temporary leave in collaboration with the individual, his family, and others, including the community services board (CSB), when appropriate. Provisions require state facilities to document the specific authorization and justification for temporary leave episodes in the individual services record and requires the leave to be consistent with the individual's service plan. State facilities may also grant extensions to time limits for episodes of leave under certain conditions. In addition, the regulation identifies who may qualify as a "responsible person" to provide oversight or care to an individual during temporary leave from the state facility.

The regulation also contains provisions for addressing emergencies or unexpected events that occur when an individual is on leave from a state facility, including illness, injury, or death, or when an individual fails to return to the facility on schedule.

Issues: The new regulation should be advantageous to the public because it requires individuals, family members, CSBs and facility personnel to work together to plan leave situations so that leave episodes are consistent with individual needs and preferences. The regulation also requires facilities to implement standard processes for intervening and assisting individuals, their families or responsible persons to resolve problems that may occur during leave. The provisions establish process requirements for state facilities to use in planning and granting leave that should not be burdensome to the public.

The new regulation will promote agency accountability by requiring all leave to be appropriately authorized and documented. It will standardize leave practices and provide means to enhance therapeutic options available to individuals receiving services in state facilities by granting temporary leave. This regulatory action will allow the agency to comply with its statutory mandate to promulgate regulations pertaining to temporary leave.

These regulations should not have any impact on businesses. There are no known disadvantages to this regulatory action.

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 § 37.2-873 B of the Code of Virginia, the State Mental Health, Mental Retardation, and Substance Abuse Services Board (the board) proposes to adopt permanent regulations governing temporary leave from state mental health and mental retardation facilities.

Estimated economic impact. Section 37.2-873 B of the Code of Virginia establishes that consumers may be granted temporary leaves from state mental health and mental retardation facilities in accordance with regulations adopted by the board. The Department of Mental Health, Mental Retardation and Substance Abuse Services (the department) has developed administrative policies to govern temporary leave practices, but regulations have not been adopted by the board. In order to comply with the statute, the board proposes to adopt the current temporary leave policies of the department as permanent regulations.

The proposed regulations provide a facility director the authority to grant three types of temporary leaves: short-term day passes, family visits, and trial visits. The proposed regulations also establish general requirements and administrative processes that must be followed in granting of temporary leaves and in the event of an individual's failure to return to the facility. According to the department, all of the proposed requirements have been followed in practice since 1998 under its temporary leave policy. Thus, the proposed regulations are not expected to create any significant economic impact upon promulgation. However, adoption of the current department policy as regulations will provide the public the opportunity to participate in the rulemaking process and will more strongly standardize the temporary leave practices among different facilities.

Businesses and entities affected. The proposed regulations apply to 14 state mental health and mental retardation facilities that provide services to an average daily population of 3,500 individuals.

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

Projected impact on employment. The proposed regulations are not expected to have any significant impact on employment.

Effects on the use and value of private property. No significant impact on the use and value of private property is expected.

Small businesses: costs and other effects. The proposed regulations should not affect small businesses as they apply to 14 state facilities.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations do not apply to small businesses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed regulation will govern the general process and establish requirements for granting temporary leave to individuals receiving services in state mental health and mental retardation facilities. The proposed regulation requires state facilities to include plans for temporary leave as part of individual treatment planning and gives the state facility director final authority to grant this leave. The regulation also defines the types and duration of leave that may be authorized, requires documentation, and defines a "responsible person" for an individual who is on leave status. Provisions also guide state facilities in managing situations when an individual becomes ill or injured during leave, or fails to return to the state facility as scheduled.

CHAPTER 210.

REGULATIONS TO GOVERN TEMPORARY LEAVE FROM STATE MENTAL HEALTH AND STATE MENTAL RETARDATION FACILITIES.

12 VAC 35-210-10. Authority and applicability.

This regulation is adopted pursuant to § 37.2-837 B of the Code of Virginia to establish a process and the conditions for granting a trial or home visit to individuals admitted to mental health and mental retardation facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

This regulation shall not apply to individuals receiving services in a facility who are committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, Title 19.2 or Title 53.1 of the Code of Virginia.

12 VAC 35-210-20. Definitions.

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

"Case management community services board" is a citizen board established pursuant to § 37.2-501 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, guardian, or legally authorized representative resides. The case management community services board (CSB) is responsible for case management, liaison with the state facility when an individual is admitted to a state hospital or training center, and discharge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual chooses to reside in a different locality after discharge from the facility, the community services board serving that locality becomes the case management CSB.

"Day pass" means authorized leave from the facility without a staff escort generally occurring during the day and not extending overnight.

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

"Family visit" means an authorized overnight absence from a state hospital or training center that allows an individual to spend time with family members, a legally authorized representative, or other responsible person or persons.

"Individual" means a person who is receiving services in a state hospital or training center. This term includes the terms "consumer," "patient," "resident," and "client."

"Legally authorized representative" or "LAR" means a person permitted by law or regulations to give informed consent to treatment, including medical treatment and participation in human research, and to authorize the disclosure of information on behalf of an individual who lacks the mental capacity to make these decisions.

"Missing person" means an individual who is not physically present when and where he should be and his absence cannot be accounted for or explained.

"Responsible person" means an individual's parent, guardian, relative, friend, or other person whom the facility director determines is capable of providing the individual with the needed care and supervision, and if the individual has a LAR for whom the LAR has given written consent to supervise the individual during temporary leave from the facility.

"Services plan" means a plan that defines and describes measurable goals, objectives and expected outcomes of services that are designed to meet an individual's specific and unique treatment needs. The term "services plan" may include but is not limited to the terms, "individualized services plan," "treatment plan," "habilitation plan," or "plan of care."

"Services record" means all clinical and medical documentation that the facility maintains about an individual who receives services.

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"State facility" or "facility" means a hospital or training center operated by the department for the care and treatment of individuals with mental illness or mental retardation.

"Trial visit" means an authorized overnight absence from a state facility without a staff escort for the purpose of assessing an individual's readiness for discharge. Trial visits do not include special hospitalizations, facility-sponsored summer camps, or other facility-sponsored activities that involve staff supervision.

12 VAC 35-210-30. General requirements for temporary leave.

A. Directors of state facilities shall develop written policies for authorizing and implementing the following types of temporary leave from the facility:

1. Day passes for periods that do not extend overnight;
2. Family visits and trial visits for a maximum of 28 consecutive days per episode for individuals in training centers; and
3. Family visits and trial visits for a maximum of 14 consecutive days per episode for individuals in state hospitals.

B. The justification for all temporary leave shall be documented in the individual's services record. This documentation shall include:

1. The reason for granting the specific type of leave;
2. The benefit to the individual;
3. How the leave addresses a specific objective or objectives in the individual's services plan; and
4. The signature of the facility director or designee authorizing the temporary leave.

C. Exceptions to time limitations for family visits and trial visits. Facility directors may extend the time limits, established in subdivision A of this subsection, for family visits or trial visits in individual cases when they determine that the circumstances justify an extension. When an extension is granted, the reasons and justification to support the extension shall be documented in the individual's services record. This documentation shall include:

1. The reason for the time extension;
2. The benefit to the individual; and
3. The signature of the facility director or designee authorizing the extension.

D. Responsible persons during leave.

1. Adults and emancipated minors receiving services in state hospitals who are granted a day pass, family visit, or trial visit may be:
 - a. Placed in the care of a parent, spouse, relative, guardian, or other responsible person or persons; or
 - b. Authorized to leave the facility on his own recognizance, when, in the judgment of the facility director, this leave is appropriate.

2. Individuals in training centers and minors receiving services in any state hospital, who are granted a day pass, family visit, or trial visit shall be placed in the care of:

- a. The parent, legal guardian, or LAR; or
- b. Another relative, friend, or other responsible person or persons, with the prior written consent of the LAR.

12 VAC 35-210-40. Day passes.

Each facility shall have specific policies for day passes that include:

1. Criteria for granting day passes;
2. Designation of staff members who are authorized to issue day passes; and
3. Any forms to be used by the facility regarding the issuance of day passes.

12 VAC 35-210-50. Trial visits.

A. The facility and the case management CSB may arrange trial visits for the purpose of assessing an individual's readiness for discharge from the facility. These trial visits shall be planned during the regularly scheduled review of the individual's services plan or at other times in collaboration with (i) the individual, (ii) the individual's family or LAR or (iii) any other person or persons requested by the individual. Plans for trial visits shall be documented in the individual's services record and include consideration of the following:

1. The individual's preferences for residential setting; and
2. The individual's needs for support and supervision.

B. In advance of the trial visit, the facility shall work with the individual, case management CSB, and responsible persons, as appropriate, to develop an emergency contingency plan to ensure appropriate and timely crisis response.

12 VAC 35-210-60. Family visits.

A. Family visits may include visits with the individual's immediate or extended family, LAR, friends, or other persons arranged by the family or LAR.

1. Training centers shall plan family visits in collaboration with the individual, his family or LAR, and when appropriate, the case management CSB;
2. State hospitals shall plan family visits in collaboration with the individual and his family or LAR, and when appropriate, the case management CSB.

B. When planning family visits facilities shall:

1. Develop plans to address potential emergencies or unexpected events;
2. Consider whether the visit has an impact on the treatment or training schedule and make appropriate accommodations; and
3. Give consideration to the individual's medical, behavioral, and psychiatric status.

12 VAC 35-210-70. Required authorizations and documentation.

The facility shall not release individuals for trial visits or family visits unless the required authorizations have been obtained and documentation is included in the individual's services record.

12 VAC 35-210-80. Illness or injury occurring during a family or trial visit.

A. When a facility is notified that an individual is injured or ill and requires medical attention while on a trial or family visit, the facility director or designee shall notify the (i) facility medical director, (ii) treatment team leader, (iii) facility human rights advocate, and (iv) case management CSB. The facility director shall also ensure that all events are reported in accordance with department and facility policy and protocol for risk management.

B. The facility director or designee may assist the case management CSB or the responsible person to identify an appropriate setting for the evaluation and treatment of the individual. The facility medical director may also consult with the physician and any other medical personnel who are evaluating or treating the individual. However, the individual shall not be returned to the facility until he is medically stabilized.

C. Individuals who have been admitted to a state hospital on a voluntary basis and require acute hospital admission for illness or injury while on temporary leave from the state hospital may voluntarily return to the state hospital following discharge from an acute care hospital if they continue to meet the admission criteria.

D. If an individual has been legally committed to a state facility and his length of stay in an acute care hospital exceeds the period of commitment to the state facility, the facility shall:

1. Discharge the individual in collaboration with the case management CSB; and
2. Notify the individual or his LAR in writing of the discharge.

E. All medical expenses incurred by an individual during a trial visit or family visit are the responsibility of the person into whose care the individual was entrusted or the appropriate local department of social service of the county or city of which the individual was resident at the time of his admission to the facility pursuant to § 37.2-837 B of the Code of Virginia.

F. If the facility is notified that an individual has died while on temporary leave, the facility director or designee shall:

1. Notify the appropriate facility staff, including, the medical director, risk manager, treatment team leader, and human rights advocate;
2. Notify the case management CSB, if necessary;
3. File the appropriate documentation of the death in accordance with department policies and procedures; and
4. Notify the state medical examiner in writing of the death.

12 VAC 35-210-90. Failure to return to training centers.

A. When an individual fails to return to a training center facility from any authorized day pass, family visit, or trial visit within two hours of the scheduled deadline, the facility director or designee shall contact the responsible person into whose care the individual was placed to determine the cause of the delay.

B. Upon the request of the responsible person, the facility director may extend the period of a family or trial visit for up to 72 hours beyond the time the individual was scheduled to return when:

1. An emergency or unforeseen circumstances delay the individual's return to the training center; and
2. The individual's LAR agrees to the extension.

Extensions for emergency or unforeseen circumstances shall not be granted in advance of the family visit or trial visit. See 12 VAC 35-210-30 C for the conditions and requirements for granting individual exceptions to specified time limitations in advance of family or trial visits.

C. If an individual does not return to the training center from a trial visit or family visit within two hours of the established deadline for his return and the facility is unable to contact the responsible person into whose care the individual was placed, the facility director or designee may extend the period of the visit for up to 24 hours if, in his judgment, the extension is justified. During this period the facility shall continue efforts to contact the responsible person.

D. If an individual does not return to the training center and his absence cannot be accounted for or reasonably explained by the responsible person or a family member, he shall be classified as a missing person, and the facility will follow the department's policies and procedures for management of individuals who are missing.

E. If no emergency or unforeseen circumstances exist that may prevent the individual's return to the facility, and the responsible person does not agree to the return of the individual to the training center as scheduled, the facility director shall contact the case management CSB and discharge the individual. Written notification of discharge shall be sent to the individual's LAR.

12 VAC 35-210-120. Failure to return to hospitals.

A. When an individual fails to return to a state hospital from any authorized day pass, family visit, or trial visit within two hours of the scheduled deadline, the facility director or designee shall contact the responsible person into whose care the individual was placed to determine the cause of the delay.

B. Upon the request of the responsible person, the facility director may extend the period of the visit for up to 72 hours beyond the time the individual was scheduled to return when:

1. An emergency or unforeseen circumstances delay the individual's return to the hospital; and
2. The individual or his LAR agree to the extension.

Extensions for emergency or unforeseen circumstances shall not be granted in advance of the family visit or trial visit. See 12 VAC 35-210-30 C for the conditions and requirements for

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granting individual exceptions to specified time limitations in advance of family or trial visits.

C. If an individual agrees to return to the facility, the facility director or designee may assist the individual to make arrangements for his return in collaboration with the case management CSB and the responsible person, when necessary.

D. If an individual is unwilling to return to the facility, the facility director or his designee shall contact the responsible person to determine whether continued hospitalization is appropriate or the individual should be discharged.

1. If there is no evidence that the individual meets the criteria for hospitalization then the facility shall discharge the individual in collaboration with the case management CSB.

2. If the individual has been legally committed to the hospital and the facility director determines that the individual may require further hospitalization or that the individual cannot be located, the facility director shall:

- a. Ensure that the commitment order is valid;
- b. Classify the individual as a missing person;
- c. Alert the case management CSB pursuant to the department's policies and procedures for managing of individuals who are missing from state facilities;
- d. Issue a warrant for the individual's return; and
- e. Arrange for a physical examination at the time of the individual's return to the facility.

3. If the individual is on voluntary status or the commitment order is no longer valid the facility director, after consulting with the appropriate clinical staff, shall:

- a. Discharge the individual; and
- b. Alert the case management CSB of the individual's status.

F. When it is determined that an individual who has been legally committed to the facility and has been on temporary leave must be returned to the facility and the individual refuses to return on his own accord, the facility director or his designee shall:

1. Issue a warrant for the individual's return to the hospital; and
2. Contact the case management CSB upon revocation of the trial visit.

VA.R. Doc. No. R05-30; Filed July 27, 2006, 10:40 a.m.

TITLE 22. SOCIAL SERVICES

CHILD DAY-CARE COUNCIL

Title of Regulation: **22 VAC 15-10. Public Participation Guidelines (amending 22 VAC 15-10-40 and 22 VAC 15-10-50).**

Statutory Authority: §§ 2.2-4007 and 63.2-1735 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 20, 2006.

(See Calendar of Events section for additional information)

Agency Contact: Richard Martin, Manager, Office of Legislative and Regulatory Affairs, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7902, FAX (804) 726-7906 or e-mail richard.martin@dss.virginia.gov.

Basis: Section 2.2-4007 D of the Code of Virginia mandates that the Child Day-Care Council promulgate Public Participation Guidelines. Section 63.2-1735 of the Code of Virginia vests the Child Day-Care Council with the authority to promulgate regulations for licensure and operation of child day centers in the Commonwealth.

Purpose: This regulation establishes procedures to solicit input from interested parties prior to the formation and drafting of regulations and during the formation, promulgation and final adoption of regulations by the Child Day-Care Council and the Department of Social Services. The Virginia Administrative Process Act requires that this regulation be in place before the Child Day-Care Council can adopt any other regulation. This regulation permits the council to execute its statutory responsibilities for promulgating regulations to carry out the purposes of § 63.2-1735 of the Code of Virginia.

The Child Day-Care Council has promulgated three regulations to administer programs for the licensure and operation of child day centers. The intent of these programs is to protect and ensure the health, safety and welfare of citizens utilizing child day care services throughout the Commonwealth.

The goal of these amendments is to increase participation, reduce cost and improve the speed of communication through the electronic transmission of public comment and to make editorial changes throughout the regulation to improve clarity.

Substance: This regulatory action provides for the electronic transmission of information to include e-mail notifications, receiving public comment by e-mail and use of the Internet for dissemination and collection of comment on regulatory actions. The action also incorporates recent statutory changes that concern public participation in the regulatory process.

22 VAC 15-10-40 is amended to reflect the provisions of Chapter 241 of the 2002 Acts of Assembly, which relate to petitions for rulemaking. 22 VAC 15-10-50 is amended to reflect the statutory changes of Chapter 717 of the 1995 Acts of Assembly, which make publication of proposed regulations

in a newspaper of general circulation discretionary rather than mandatory.

Issues: These regulations benefit the public by letting individuals and regulated entities know how they may be involved in the development and promulgation of the Child Day-Care Council's regulations. These regulations benefit the Commonwealth by permitting the Child Day-Care Council to fulfill its statutory mandate to promulgate regulations necessary to implement § 63.2-1735 of the Code of Virginia.

This regulation creates no known disadvantage 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 Section 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 Child Day-Care Council (council) proposes to amend its Public Participation Guidelines to specify that only the council is authorized to respond to petitions to amend or add regulations and to clarify that the Department of Social Services (DSS) may act on behalf of the council in certain circumstances. The council, or the DSS on behalf of the council, will be required to inform all interested parties of any notice of intended regulatory action (NOIRA) and will be required to accept and consider public comments before drafting regulations and before approving final regulations. Pursuant to Chapter 717 of the 1995 Acts of Assembly, the council also proposes to exercise discretion as to whether notices of public comment period need be published in the newspaper.

Estimated economic impact. Current Public Participation Guidelines allow either the council or DSS to respond to petitions suggesting a regulatory change. Because § 2.2-4007 of the Code of Virginia requires that rulemaking entities respond to petitions for possible rule changes, the proposed regulation will require the council, only, to respond to any petitions for changes to council regulations that are submitted either to the council or to DSS. The public will benefit from this regulatory change to the extent that it eliminates confusion as to what entity holds actual rule-making power.

Current regulation allows the Commissioner of DSS to undertake certain actions such as delivering NOIRAs to the Registrar of Regulations and soliciting public comment on proposed regulations after they are approved by the council. Current regulation also mandates that the council mail or e-mail NOIRAs to all interested parties and make provisions to accept comment on disseminated NOIRAs. The proposed regulation clarifies that DSS may undertake all of these

actions on behalf of the council. This is a clarification of regulatory language that reflects current DSS and council policy. To the extent that current regulation does not reflect actual administrative process practice and, therefore, may be confusing, this change will be beneficial.

Current regulation requires that the council make provisions for accepting comments during the rulemaking process both at the NOIRA and proposed stages. The proposed regulation expands on this by listing the provisions that the council has made to accept comments and mandating that the council consider received comments both while they are drafting regulations and before they approve final regulations. Specifically, DSS will be charged with accepting comments during the NOIRA and proposed stages of the regulatory amendment process. While the council is required by the proposed regulation to consider comments at both stages, DSS is only explicitly required to provide any submitted comments, and a summary of those comments, to the council at the end of the proposed stage comment period.

This emphasis on proposed stage comments may not allow the council to give due weight to the views of regulated entities or the interested public when they are drafting a regulation as is required by both the Administrative Process Act and Executive Order 21. It is likely that the public would benefit more from a process under which comments given at either stage are considered equally.

Currently, the council is required to solicit comments on proposed regulations by publishing a notice of comment period in a newspaper of general circulation. Pursuant to Chapter 717 of the 1995 Acts of Assembly, the council proposes to exercise discretion as to whether this notice need be published. DSS, acting for the council, has the ability at this time to notify all regulated entities and other interested parties of intended regulatory change through their email system. Additionally, newspaper notifications do not appear to be a useful or efficient tool to solicit comment as DSS reports that they have received few or no comments via this method in the past. This regulatory change is very likely to have no ill effect on the public and will save the council several hundred dollars per proposed regulation.

Businesses and entities affected. There are currently 2,831 child day centers that are licensed by the Commonwealth and will be affected by the proposed regulation; most of these are small businesses.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation is likely to have no impact on employment in the Commonwealth.

Effects on the use and value of private property. The proposed regulation will have no effect on the use or value of private property.

Small businesses: costs and other effects. Small businesses should benefit from this clarification of the council's Public Participation Guidelines.

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Small businesses: alternative method that minimizes adverse impact. The proposed regulation will not have an adverse impact on affected small businesses.

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 regulation sets forth the procedures the Child Day-Care Council uses to obtain public input when developing, revising or repealing a regulation. This regulation covers the following topics: petitions from interested parties, solicitation of input, public hearings, and withdrawal of regulations. The proposed amendments provide for electronic transmission of information and incorporate recent statutory changes.

22 VAC 15-10-40. Petitions from interested parties.

Any person may petition the council or department to develop a new regulation or to adopt, amend or repeal a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended new regulation or addition, deletion, or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The council or department shall provide a written response to such petition and shall notify the other entity pursuant to the provisions of subsection A of § 2.2-4007 of the Code of Virginia.

22 VAC 15-10-50. Solicitation of input.

A. The department shall establish and maintain lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations under its administration, management or supervision. Persons may request the addition of their name and address to the lists at any time. Persons who elect to be included on an electronic mailing list may also request that all mailings be sent in hard copy. The lists will be updated as additional interested parties are identified. Deletions will be made when either regular or electronic mail is returned undeliverable or there is a lack of interest as determined by the department as a result of periodic contact initiated by the department.

B. The council may form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting, formation or review of a proposal when expertise is necessary to address a specific regulatory interest or issue, or when

persons register an interest in the subject of the regulation and in working with the council.

C. Whenever the council identifies a need for the adoption, amendment or repeal of regulations under its authority, it may commence the regulation adoption process according to these procedures.

D. The council shall issue a Notice of Intended Regulatory Action (NOIRA) which describes the subject matter and intent of the planned regulation for all regulatory proposals in accordance with the Administrative Process Act. The NOIRA shall state whether the council intends to hold a public hearing.

E. The ~~commissioner~~ department on behalf of the council shall disseminate the NOIRA to the public by distribution to the Registrar of Regulations for publication in The Virginia Register.

F. The department on behalf of the council shall disseminate the NOIRA to the interested parties on the lists established under subsection A of this section by mail or electronic transmission as chosen by the parties.

G. The department on behalf of the council shall make provision for receiving comments pertaining to the NOIRA by regular mail, the Internet, facsimile or electronic means. The council shall consider public comment in drafting proposed regulations.

H. Upon approval by the council of the proposed regulations, the ~~commissioner~~ department on behalf of the council shall solicit public comment through:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register; and
2. Distribution of a notice of comment period to persons on the lists established under subsection A of this section.

~~I. The council shall solicit public comment on proposed regulations through:~~

- ~~1. Publication of a Notice of Comment Period in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate; and~~
- ~~2. Distribution of a notice of comment to the interested parties on the lists established under subsection A of this section by mail or electronic transmission as chosen by the parties.~~

I. At the discretion of the council, the department on behalf of the council may solicit public comment on a proposed regulation through publication of a notice in any newspaper as determined by the council. Any notice published shall comply with the provisions of subsection F of § 2.2-4007 of the Code of Virginia.

~~J. The council shall make provision for receiving comments pertaining to the proposed regulation by regular mail, the Internet, facsimile or electronic means. The council shall consider public comment in approving final regulations. On behalf of the council, the department shall make provisions for receiving comment on the proposed regulation by regular~~

mail, the Internet, facsimile and other electronic means. At the conclusion of the public comment period, the department shall provide that comment to the council.

K. At least five days prior to final adoption of a regulation by the council, the department on behalf of the council shall prepare a summary description of all public comment received during the proposed comment period. This summary shall be available to all public commenters and to the public.

VA.R. Doc. No. R05-223; Filed July 27, 2006, 2:10 p.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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

REGISTRAR'S NOTICE: The Commissioner of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 12 of the Code of Virginia, which exempts regulations adopted pursuant to § 3.1-741.6 of the Code of Virginia, relating to the control of avian influenza.

Title of Regulation: **2 VAC 5-195. Prevention and Control of Avian Influenza in the Live-Bird Marketing System (adding 2 VAC 5-195-10 through 2 VAC 5-195-180).**

Statutory Authority: § 3.1-741.6 of the Code of Virginia.

Effective Date: August 21, 2006.

Agency Contact: David E. Cardin, DVM, Deputy State Veterinarian, 102 Governor Street, Suite 165, Richmond, VA 23219, telephone (804) 692-0601, FAX (804) 371-2380, or e-mail david.cardin@vdacs.virginia.gov.

Summary:

The regulation establishes the requirements for prevention and control of low pathogenicity avian influenza in any component of a live-bird marketing system operating in the Commonwealth of Virginia. It requires all components of a live-bird marketing system (live-bird market, distribution unit, and production unit) operating in Virginia to be licensed and to establish and enforce written biosecurity protocols. The regulation authorizes the Department of Agriculture and Consumer Services to monitor compliance with all aspects of the program, including periodic inspection of premises and testing of birds.

PART I.

PREAMBLE; PURPOSE; DEFINITIONS.

2 VAC 5-195-10. Preamble.

The Board of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time regarding the content of this regulation.

2 VAC 5-195-20. Purpose.

This regulation establishes the requirements for prevention and control of LPAI in any component of a live-bird marketing system operating in the Commonwealth of Virginia.

2 VAC 5-195-30. Definitions.

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

"Accredited veterinarian" means a veterinarian approved by the USDA, in accordance with the provisions of 9 CFR 160.1 (2002).

"AI" means "avian influenza," a disease of viral etiology, specifically an influenza A virus, that ranges from a mild or even asymptomatic infection to an acute, fatal disease of chickens, turkeys, guinea fowls, and other avian species, especially migratory waterfowl.

"APHIS" means the "Animal and Plant Health Inspection Service," an agency of the USDA.

"Approved laboratory" means a state, federal, university or private laboratory that has been approved by USDA, APHIS, VS to perform any or all official program tests for AI diagnosis.

"Auction market" means a business where producers, dealers, wholesalers and retailers meet to purchase, trade or sell live birds.

"Biosecurity" means the measures taken to prevent disease agents from being introduced and spreading to animal populations or their proximity.

"Bird" means "poultry" for the purposes of this regulation.

"C&D" means "cleaning and disinfection."

"Distribution unit" means a person or business such as a wholesaler, dealer, hauler, and auction market engaged in the transportation or sale of poultry within the live-bird marketing system.

"Hauler" means a business or individual that transports poultry from producer premises to another supplier premises, to another distributor, or to a LBM.

"HPAI" means "high pathogenicity avian influenza," which is any influenza virus that meets the World Organization for Animal Health (OIE) definition and the definition included in 9 CFR 53.1.

"LBM" means "live-bird market," which is any facility that receives live poultry to be resold or slaughtered and sold on-site, not including any producer or grower that prior to the sale of his own birds slaughters or processes them on-site or at an approved slaughter facility or any producer or grower that sells live birds grown exclusively on his premises and is not a "production unit" or "distribution unit" as defined herein.

"Licensing" means the requirement for issuance of a license to conduct business in the live-bird marketing system in Virginia. This consists of the licensing of facilities by the state and providing oversight as required in this regulation.

"Live-bird marketing system" means LBMs and the production and distribution units that supply LBMs with birds.

"LPAI" means "low pathogenicity avian influenza," which is any AI virus that does not meet the criteria for HPAI.

"LPAI Program" means low pathogenicity avian influenza H5 and H7 program, the state-federal-industry cooperative program for the prevention and control of H5 and H7 LPAI. Participating states shall have regulations to enforce program standards and requirements.

"NVSL" means the USDA, APHIS, "National Veterinary Services Laboratories" in Ames, IA. It is the national diagnostic reference laboratory.

"Poultry" means any species of domestic fowl (including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds) raised for food production or other purposes.

"Poultry waste" means dead birds, feathers, offal, and poultry litter.

"Premises identification number" means a unique identification number that may be assigned by the State Veterinarian to a LBM, distributor, or production flock.

"Production unit" means a production facility or farm that is the origin of or participates in the production of poultry offered for sale in a LBM.

"State Veterinarian" means a qualified veterinarian employed by the Commissioner of Virginia Agriculture and Consumer Services and so designated.

"USDA" means the "United States Department of Agriculture."

"VS" means "Veterinary Services," an office under the USDA, APHIS.

PART II. LIVE-BIRD MARKETS.

2 VAC 5-195-40. LBM licensing and training requirements. (~~Effective 90 days after publication of the final regulation in the Virginia Register of Regulations. Effective 11/19/06 .~~)

Every LBM in Virginia shall apply to the State Veterinarian for a license to operate. The LBM shall comply with the requirements of this regulation. A premises identification number shall be assigned. The premises identification number shall be recorded on the license to operate.

Requirements for issuance of a license to a LBM are the applicant's agreement to comply with the requirements of this regulation and Virginia's Avian Influenza Proclamation, development and implementation of a written biosecurity plan approved by the State Veterinarian, consent to an initial, random and at least quarterly inspection of the LBM and consent for the State Veterinarian to review all records relating to the LBM.

Failure of the LBM to satisfactorily comply with any of the licensing requirements shall result in the denial of a license to operate. [The State Veterinarian may seize and (i) destroy, or (ii) dispose of by any means necessary or appropriate, in the State Veterinarian's judgment, any poultry found in an unlicensed LBM operating in Virginia.]

When the State Veterinarian determines that a licensed LBM no longer meets the requirements of this regulation, such

license shall be suspended until such time that deficiencies have been corrected to the satisfaction of the State Veterinarian.

The LBM shall allow the State Veterinarian access to the LBM and the birds in the LBM for inspection and testing and for examination of the LBM records.

LBM managers shall attend training that is provided or approved by the State Veterinarian. Such training shall include disease recognition and biosecurity requirements. A certificate of training shall be provided by the trainer and maintained by the LBM in the LBM personnel files.

All personnel that work in the LBM shall be trained in biosecurity procedures as arranged by the owner/manager. A certificate of training shall be maintained by the LBM in the LBM personnel files.

No LBM shall transport birds directly from a production unit, a wholesaler, or an auction market in Virginia unless the LBM is also licensed as a distribution unit in Virginia.

2 VAC 5-195-50. LBM bird testing and recordkeeping.

The LBM shall verify bird identification and AI test-negative status of birds at the time of their receipt. If such documentation is not available, the birds shall not enter the LBM. Records for birds shall include the date of entry, the premises-of-origin identification number with a lot identifier, the number and species of birds in the lot, the distributor license number, the date of sale, and a copy of the negative test results for the birds. The record requirements shall include all premises that birds have visited from the flock of origin to the LBM, including production and distribution units where commingling may have occurred.

The LBM shall maintain records for 12 months from the birds' date of entry into the LBM. A copy of the form to be used may be obtained from the State Veterinarian.

2 VAC 5-195-60. LBM sanitation and biosecurity requirements.

A written biosecurity protocol approved by the State Veterinarian shall be developed and practiced by the LBM.

The LBM shall keep the LBM environment and crates in a clean and sanitary condition as defined by the biosecurity protocol. LBM managers shall ensure that employees follow the approved biosecurity protocol.

The LBM shall slaughter and process the birds before the birds leave the LBM, unless otherwise provided in the biosecurity protocol.

LBMs shall undergo quarterly closures with bird removal and C&D with a minimum of 24 hours of downtime. The LBM shall be inspected and approved by the State Veterinarian prior to reopening.

Poultry waste shall be placed in leak-proof bags or other approved containers, sealed, and disposed of daily through procedures acceptable to the local jurisdiction where the LBM is located.

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2 VAC 5-195-70. LBM surveillance.

Birds in the LBM may be tested for AI at any time, but they shall be tested at least quarterly. Appropriate samples will be collected for AI testing at an approved laboratory.

Specimens tested may include those collected from live birds; the environment within the LBM; swabs collected on arrival from birds, conveyances, and crates; and swabs or tissues from sick and dead birds detected in the LBM. The number and source of the specimens shall be determined by the State Veterinarian.

2 VAC 5-195-80. Handling of LBM positive laboratory results.

When birds in a LBM test positive for AI, the LBM shall close. Such LBMs shall depopulate and perform C&D. The State Veterinarian shall approve depopulation and disposal methods. The State Veterinarian may at his discretion approve a plan to allow the LBM up to five calendar days from the time of notification of positive test results from an approved laboratory to sell down its poultry inventory. Additional birds shall not enter the LBM after notification of positive status for AI or during the sell-down period.

Prior to reopening, the LBM shall be inspected by the State Veterinarian. Environmental samples shall be taken for testing at this time, but the LBM may be allowed to reopen while it awaits environmental test results. If results are positive for AI, the LBM shall again close (with up to five days to permit sell down, if appropriate) and shall again perform C&D procedures within 24 hours of the depopulation, followed by inspection and retesting.

Samples that initially test positive for AI at an approved laboratory shall be submitted to the NVSL for confirmation.

Any LBM that has a positive AI test shall undergo monthly testing.

After three consecutive negative tests, the LBM may be allowed to return to a schedule of quarterly testing and quarterly closures.

When AI-positive birds are in the LBM or delivered to the LBM, an investigation shall be initiated by the State Veterinarian. LBM records shall be presented to the State Veterinarian for epidemiologic investigation.

PART III. DISTRIBUTION UNITS.

2 VAC 5-195-90. Distribution unit licensing and training requirements. (~~Effective 90 days after publication of the final regulation in the Virginia Register of Regulations Effective 11/19/06~~.)

All distribution units shall apply to the State Veterinarian for a license to receive, purchase, or transport poultry from a production unit or another distribution unit in Virginia. A premises identification number shall be assigned. The premises identification number shall be recorded on the license to operate.

To receive a license to distribute birds within the live-bird marketing system in Virginia, distribution units shall allow the

State Veterinarian access to records upon request and permit inspections and AI testing of birds, premises, and equipment.

A distribution unit license shall not be issued in Virginia until the State Veterinarian has performed an inspection of the unit, its record system, conveyances, crates, and the C&D equipment that will be used. If a distribution unit is located outside of Virginia, the State Veterinarian, at his discretion, may approve an inspection of the unit, its record system, conveyances, crates, and the C&D equipment that will be used, performed by a state or federal veterinary official from the state where the distribution unit is physically located. Distribution units located outside of Virginia and licensed by Virginia shall immediately notify the State Veterinarian of all inspections of the unit, its record system, conveyances, crates, and C&D equipment performed by a state or federal veterinary official in the state where the distribution is physically located.

Requirements for issuance of a license to a distribution unit are the applicant's agreement to comply with the requirements of this regulation and Virginia's Avian Influenza Proclamation, development and implementation of a written biosecurity plan approved by the State Veterinarian, consent to an initial, random and at least quarterly inspection of the distribution unit and consent for the State Veterinarian to review all records relating to the distribution unit.

Failure of the distribution unit to satisfactorily comply with any of the licensing requirements shall result in the denial of a license to operate.

When the State Veterinarian determines that a licensed distribution unit no longer meets the requirements of this regulation, such license shall be suspended until such time that deficiencies have been corrected to the satisfaction of the State Veterinarian.

All personnel that work for a distribution unit in Virginia shall be trained in biosecurity procedures provided or approved by the State Veterinarian. A certification of employee training shall be maintained in the distribution unit's personnel files.

2 VAC 5-195-100. Distribution unit bird testing and recordkeeping.

Distribution units shall verify bird identification and AI test-negative status of birds. Distribution units shall provide documentation and certification of a negative test for AI with each delivery of birds to a LBM.

Distribution units shall maintain records of bird pickups and deliveries for 12 months after distribution to the LBM. These records shall include copies of negative AI test results, dates of pickup and delivery, location of origin, species, numbers of birds, and farm premises location that includes lot identification. In addition, distribution units shall keep records of C&D of premises and conveyances for 12 months after distribution of the birds to the LBM. A copy of the records form may be obtained from the State Veterinarian.

2 VAC 5-195-110. Distribution unit sanitation and biosecurity requirements.

Distribution unit vehicles, bird-holding devices, and any premises where birds may be held shall be kept clean and sanitary.

A written biosecurity protocol approved by the State Veterinarian shall be developed and practiced by the distribution unit.

Distribution units shall use state-approved all-season crates and conveyance washing equipment and present C&D documentation when obtaining birds from production units and other distribution units. The distribution unit shall perform C&D on all crates, conveyance vehicles, and other equipment after visiting a LBM and before returning to a farm. The distribution unit shall maintain documentation of the most recent C&D in the unit's conveyance vehicle. The distribution unit shall maintain C&D documentation of all facilities, conveyance vehicles, and other equipment for the most recent 12 months as part of its record system.

Distribution units shall not transport live birds from LBMs.

2 VAC 5-195-120. Distribution unit surveillance.

Distribution units receiving, purchasing, or transporting poultry from a production unit or another distribution unit in Virginia shall be subjected to random inspections by the State Veterinarian. Inspections shall be accomplished at least quarterly to ensure that conveyances, crates, and facilities are clean and sanitary and that records are kept in accordance with the requirements of this regulation. Distribution units physically located outside of Virginia shall present conveyances, crates, and C&D equipment used as part of the live-bird marketing system in Virginia for random inspections to be accomplished at least quarterly by the State Veterinarian.

Distribution units receiving, purchasing, or transporting poultry from a production unit or another distribution unit in Virginia may be tested for AI at any time, but they shall be tested at least quarterly. Specimens of choice and the types of tests to be run for each are at the discretion of the State Veterinarian. Distribution units shall notify the State Veterinarian of any AI test results obtained from a private entity. If a distribution unit is located outside of Virginia, the State Veterinarian, at his discretion, may approve testing for AI performed by a state or federal veterinary official from the state where the distribution unit is physically located. Distribution units located outside of Virginia and licensed by Virginia shall immediately notify the State Veterinarian of all AI test results of the unit, conveyances, crates, and C&D equipment performed by a state or federal veterinary official in the state where the distribution is physically located or by a private entity.

2 VAC 5-195-130. Handling of distribution unit positive laboratory results.

Distribution units that receive, purchase, or transport poultry from a production unit or another distribution unit in Virginia with birds that test positive for AI at an approved laboratory shall close and undergo depopulation of any birds on any premises and C&D of the distribution unit in Virginia. The

State Veterinarian shall approve depopulation and disposal methods.

Environmental samples may be taken for AI testing if indicated. Any environmental sample testing positive for AI at an approved laboratory will be submitted to the NVSL for confirmation.

A distribution unit receiving, purchasing, or transporting poultry from a production unit or another distribution unit in Virginia that fails a biosecurity inspection or is positive on quarterly AI testing shall undergo monthly inspections and AI testing until there have been three consecutive months of negative AI testing and satisfactory results from a biosecurity inspection, at which time quarterly testing may resume.

When AI-positive birds are found within the distribution unit receiving, purchasing, or transporting poultry from a production unit or another distribution unit in Virginia, the State Veterinarian shall initiate an investigation. All distribution unit records shall be presented to the State Veterinarian for epidemiologic investigation.

PART IV. PRODUCTION UNITS.

2 VAC 5-195-140. Production unit licensing and training requirements. (~~Effective 90 days after publication of the final regulation in the Virginia Register of Regulations Effective 11/19/06~~.)

Production units shall apply to the State Veterinarian for a license to operate in Virginia. A premises identification number shall be assigned. The premises identification number shall be recorded on the license to operate.

Production units shall allow the State Veterinarian access to records upon request. Testing for AI shall be conducted by the State Veterinarian.

Requirements for issuance of a license to a production unit are the applicant's agreement to comply with the requirements of this regulation and Virginia's Avian Influenza Proclamation, development and implementation of a written biosecurity plan approved by the State Veterinarian, consent to an initial, random and at least quarterly inspection of the production unit and consent for the State Veterinarian to review all records relating to the production unit.

Failure of the production unit to satisfactorily comply with any of the licensing requirements shall result in the denial of a license to operate in Virginia.

When the State Veterinarian determines that a licensed production unit no longer meets the requirements of this regulation, such license shall be suspended until such time that deficiencies have been corrected to the satisfaction of the State Veterinarian.

Production unit personnel shall attend training provided or approved by the State Veterinarian. Such training shall include disease recognition and biosecurity requirements. A certificate of training shall be provided by the trainer and maintained with the production unit's personnel records.

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2 VAC 5-195-150. Production unit bird testing and recordkeeping.

Production unit birds shall originate from a negative AI flock and shall bear or be accompanied by identification to a premises of origin. The categories of production units and the testing requirements for each category are as specified in the "USDA Uniform Standards for a State-Federal-Industry Cooperative Program, October 20, 2004."

Samples for AI testing may be collected by state or federal animal health technicians, veterinary medical officers, accredited veterinarians, or others so designated by the State Veterinarian.

The production unit shall maintain AI flock test records as well as records of bird purchases and transfers for 12 months from the date the bird left the production unit. A copy of the form to be used may be obtained from the State Veterinarian.

Production unit birds loaded for transportation shall be identified by premises of origin and shall contain a lot number that will distinguish the shipment from others. The production unit shall record this information on the test certificate that will be provided to the distribution unit.

A production unit shall not sell its birds directly to LBMs unless the production unit is also licensed as a distribution unit in Virginia. A production unit licensed as a distribution unit in Virginia shall locate the C&D equipment at a site approved by the State Veterinarian.

Production unit premises with birds that test positive for AI shall be quarantined while results are being confirmed. Positive AI flocks shall be tested using a virus-detection procedure.

Production unit premises that are confirmed positive for AI shall be depopulated and shall undergo C&D. The State Veterinarian shall approve depopulation and disposal methods. Such depopulation and disposal shall be accomplished by production unit personnel. The premises shall then be inspected and retested. The production unit shall have a negative AI environmental test before restocking. If approved by the State Veterinarian, controlled slaughter may be directed as a method of depopulation.

2 VAC 5-195-160. Production unit sanitation and biosecurity requirements.

A production unit shall keep its unit, conveyances, bird-holding devices, and other equipment clean and sanitary.

A written biosecurity protocol approved by the State Veterinarian shall be developed and practiced by the production unit.

Production units shall have state-approved equipment available for C&D of premises, conveyances, and crates. Production units shall maintain records of downtime and C&D for 12 months after distribution of the birds in the live-bird marketing system.

Production units shall notify the State Veterinarian of dates and times of scheduled pickups by distribution units at least 48 hours prior to the scheduled pickups.

2 VAC 5-195-170. Production unit surveillance.

Production unit premises shall be subject to random inspections by the State Veterinarian to ensure that premises, conveyances, and coops are clean and sanitary. Random samples for AI testing may be collected from birds or the environment at the time of inspection. The production unit shall provide records for review during production unit inspections.

2 VAC 5-195-180. Handling of production unit positive laboratory results.

Production unit bird samples positive for AI shall be submitted to the NVSL for confirmation. The premises shall be quarantined until results are obtained from the NVSL.

Production unit premises with AI-positive birds confirmed by the NVSL shall remain under quarantine. All records shall be presented to the State Veterinarian for epidemiologic investigation. The birds shall be depopulated and the premises shall undergo C&D by employees of the production unit, under the supervision of the State Veterinarian.

The State Veterinarian may require depopulation and disposal any time multiple positive AI screening tests are reported, without waiting for NVSL confirmation.

DOCUMENT INCORPORATED BY REFERENCE

Prevention and Control of H5 and H7 Low Pathogenicity Avian Influenza in the Live Bird Marketing System: Uniform Standards for a State-Federal-Industry Cooperative Program, APHIS 91-55-076, eff. October 20, 2004, United States Department of Agriculture.

VA.R. Doc. No. R06-232; Filed August 1, 2006, 3:51 p.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 20-566. Pertaining to the Hampton Roads Shellfish Relay Area (amending 4 VAC 20-566-30).**

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

Effective Date: August 1, 2006.

Agency Contact: Betty Warren, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2069, FAX (757) 247-2002 or e-mail betty.warren@mrc.virginia.gov.

Summary:

The amendment extends the open harvest season for the Hampton Roads Shellfish Relay Area through September 30 for all years.

4 VAC 20-566-30. Harvest season.

A. The open harvest season for the Hampton Roads Shellfish Relay Area, as specified by § 28.2-816 of the Code of Virginia, shall be extended through September 30, 2005. Harvest of hard clams in the Hampton Roads Shellfish Relay Area shall only occur on Mondays through Fridays during the 2005 open harvest season. Thereafter, the Hampton Roads Shellfish Relay Area shall be managed by the authority promulgated in § 28.2-816 of the Code of Virginia.

B. It shall be unlawful to harvest hard clams from the Hampton Roads Shellfish Relay Area, except as provided in subsection A of this section.

VA.R. Doc. No. R06-302; Filed July 28, 2006, 9:41 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

REGISTRAR'S NOTICE: Due to its length, 12 VAC 5-481 is not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, a summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Health (see contact information below) and is accessible on the Virginia Register of Regulations website at:

<http://legis.state.va.us/codecomm/register/vol22/iss25/f12v5481full.doc>.

Titles of Regulations: 12 VAC 5-480. Radiation Protection Regulations (repealing 12 VAC 5-480-10 through 12 VAC 5-480-8920).

12 VAC 5-481. Virginia Radiation Protection Regulations (adding 12 VAC 5-481-10 through 12 VAC 5-481-3670).

Statutory Authority: § 32.1-229 of the Code of Virginia.

Effective Date: September 20, 2006.

Agency Contact: Les Foldesi, Director, Radiological Health Program, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8150, FAX (804) 864-7902, or e-mail les.foldesi@vdh.virginia.gov.

Summary:

The Virginia Department of Health has abolished the existing Radiation Protection Regulations (12 VAC 5-480) and promulgated new regulations (12 VAC 5-481) that incorporate federal standards and state legislative requirements including (i) radiation protection standards of the U.S. Nuclear Regulatory Commission, (ii) requirements of the federal Mammography Quality Standards Act of 1992, (iii) standards included in the Suggested State Regulations

of the Conference Radiation Control Program Directors, (iv) requirements for mammography machines passed by the 2000 Acts of Assembly, and (v) requirements authorizing civil penalties for violation of standards passed by the 1999 Acts of Assembly.

The proposed regulations were modified based on public comments received. The changes include less restrictive requirements for private inspector qualifications, an update of federal citations that have changed since the proposed regulations were drafted, and technical corrections to the X-ray machine performance standards.

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.

VA.R. Doc. No. R02-157; Filed August 1, 2006, 3:24 p.m.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA SAFETY AND HEALTH CODES BOARD

Title of Regulation: 16 VAC 25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16 VAC 25-60-10, 16 VAC 25-60-30, 16 VAC 25-60-40, 16 VAC 25-60-80, 16 VAC 25-60-90, 16 VAC 25-60-100, 16 VAC 25-60-120 through 16 VAC 25-60-150, 16 VAC 25-60-190, 16 VAC 25-60-260, 16 VAC 25-60-300, 16 VAC 25-60-320, 16 VAC 25-60-340).

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Effective Date: September 21, 2006.

Agency Contact: John J. Crisanti, Policy and Planning Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or e-mail john.crisanti@doli.virginia.gov.

Summary:

The amendments (i) clarify definitions and other procedural actions listed in the regulation; (ii) add statutory references applicable to public sector employers and employees and correct omissions in listing of documents covered under notification and posting requirements; (iii) clarify the disclosability of file documents in contested cases prior to the issuance of a final order; (iv) clarify the eligibility of a person to file a complaint and modify requirements for classifying and responding to complaints to correspond with the parallel procedures of federal OSHA; (v) require employers to comply with manufacturer's specifications, requirements and limitations on all machinery, equipment, vehicles, materials and tools where not superseded by specific and more stringent VOSH regulations; (vi) clarify what constitutes "agricultural operations" in the agricultural industry; (vii) clarify application of the statutory requirement to issue citations within six months of the occurrence of any

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alleged violation; (viii) codify in regulation the multi-employer worksite citation policy and multi-employer defense; and (ix) remove the direct involvement of the Commissioner of Labor and Industry in the determination of extension of abatement times.

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.

16 VAC 25-60-10. Definitions.

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

"Abatement period" means the period of time ~~permitted defined or set out in the citation~~ for correction of a violation.

~~"Board" means the Safety and Health Codes Board.~~

"Bureau of Labor Statistics" means the Bureau of Labor Statistics of the United States Department of Labor.

"Citation" means the notice to an employer that the commissioner has found a condition or conditions that violate Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

~~"Board" means the Safety and Health Codes Board.~~

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any *such* reference to the commissioner shall include his authorized representatives.

"Commissioner of Labor and Industry" means only the *individual who is* Commissioner of Labor and Industry.

"Department" means the Virginia Department of Labor and Industry.

"De minimis violation" means a violation which has no direct or immediate relationship to safety and health.

"Employee" means an employee of an employer who is employed in a business of his employer.

"Employee representative" means a person specified by employees to serve as their representative.

"Employer" means any person or entity engaged in business who has employees but does not include the United States.

"Establishment" means, for the purpose of record keeping requirements, a single physical location where business is conducted or where services or industrial operations are performed, e.g., factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract activities operated from the same physical location as a lumberyard; each activity is a separate establishment. In the public sector, an establishment is either (i) a single physical location where a specific governmental function is performed; or (ii) that location which is the lowest level where attendance or payroll records are kept for a group of employees who are

in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

"Failure to abate" means that the employer has failed to correct a cited violation within the period permitted for its correction.

"FOIA" means the Freedom of Information Act.

"Imminent danger condition" means any condition or practice in any place of employment such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through standard enforcement procedures provided by Title 40.1 of the Code of Virginia.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor.

"Other violation" means a violation which is not, by itself, a serious violation within the meaning of the law but which has a direct or immediate relationship to occupational safety or health.

~~"Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons~~ any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public employer" means the Commonwealth of Virginia, including its agencies, *authorities, or instrumentalities* or any political subdivision or public body.

"Public employee" means any employee of a public employer. Volunteer members of volunteer fire departments, pursuant to § 27-42 of the Code of Virginia, members of volunteer rescue squads who serve without pay, and other volunteers pursuant to the Virginia State Government Volunteers Act are not public employees. Prisoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to § 53.1-60 or § 53.1-131 of the Code of Virginia.

"Recordable occupational injury and illness" means (i) a fatality, regardless of the time between the injury and death or the length of illness; (ii) a nonfatal case that results in lost work days; or (iii) a nonfatal case without lost work days which results in transfer to another job or termination of employment, which requires medical treatment other than first aid, or involves loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illness which is reported to the employer but is not otherwise classified as a fatality or lost work day case.

"Repeated violation" means a violation deemed to exist in a place of employment that is substantially similar to a previous violation of a law, standard or regulation that was the subject of a prior final order against the same employer. A repeated

violation results from an inadvertent or accidental act, since a violation otherwise repeated would be willful.

"Serious violation" means a violation deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. The term "substantial probability" does not refer to the likelihood that illness or injury will result from the violative condition but to the likelihood that, if illness or injury does occur, death or serious physical harm will be the result.

"Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"VOSH" means Virginia Occupational Safety and Health.

"Willful violation" means a violation deemed to exist in a place of employment where (i) the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation; or (ii) the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.

"Working days" means Monday through Friday, excluding legal holidays, Saturday, and Sunday.

16 VAC 25-60-30. Applicability to public employers.

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

B. All sections of this chapter shall apply to public employers and their employees. Where specific procedures are set out for the public sector, such procedures shall take precedence.

C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-10, 40.1-49.4.A(1), 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.

D. Section 40.1-51.2:2 A of the Code of Virginia shall apply to public employers except that the commissioner shall not bring action in circuit court in the event that a voluntary agreement cannot be obtained.

E. Sections 40.1-49.4 F, 40.1-49.9, 40.1-49.10, 40.1-49.11, 40.1-49.12, and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.

F. If the commissioner determines that an imminent danger situation, as defined in § 40.1-49.4 F of the Code of Virginia, exists for an employee of the Commonwealth or one of its agencies, and if the employer does not abate that imminent danger immediately upon request, the Commissioner of Labor

and Industry shall forthwith petition the governor to direct that the imminent danger be abated.

G. If the commissioner is unable to obtain a voluntary agreement to resolve a violation of § 40.1-51.2:1 of the Code of Virginia by the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall petition for redress in the manner provided in this chapter.

16 VAC 25-60-40. Notification and posting requirements.

Every employer shall post and keep posted any notice or notices, as required by the commissioner, including the Job Safety and Health Protection Poster which shall be available from the department. Such notices shall inform employees of their rights and obligations under the safety and health provisions of Title 40.1 of the Code of Virginia and this chapter. Violations of notification or posting requirements are subject to citation and penalty.

1. Such notice or notices, including all citations, *notices of contest*, petitions for variances or extensions of abatement periods, orders, and other documents of which employees are required to be informed by the employer under statute or by this chapter, shall be delivered by the employer to any authorized employee representative, and shall be posted at a conspicuous place where notices to employees are routinely posted and shall be kept in good repair and in unobstructed view. The document must remain posted for 10 working days unless a different period is prescribed elsewhere in Title 40.1 of the Code of Virginia or this chapter.

2. A citation issued to an employer, or a copy of it, shall remain posted in a conspicuous place and in unobstructed view at or near each place of alleged violation for three working days or until the violation has been abated, whichever is longer.

3. A copy of any written notice of contest shall remain posted until all proceedings concerning the contest have been completed.

4. Upon receipt of a subpoena, the employer shall use the methods set forth in this section to further notify his employees and any authorized employee representative of their rights to party status. This written notification shall include both the date, time and place set for court hearing, and any subsequent changes to hearing arrangements. The notification shall remain posted until commencement of the hearing or until an earlier disposition.

16 VAC 25-60-80. Access to employee medical and exposure records.

A. An employee and his authorized representative shall have access to his exposure and medical records required to be maintained by the employer.

B. When required by a standard, a health care professional under contract to the employer or employed by the employer shall have access to the exposure and medical records of an employee only to the extent necessary to comply with the requirements of the standard and shall not disclose or report without the employee's express written consent to any person

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within or outside the workplace except as required by the standard.

C. Under certain circumstances it may be necessary for the commissioner to obtain access to employee exposure and medical records to carry out statutory and regulatory functions. However, due to the substantial personal privacy interests involved, the commissioner shall seek to gain access to such records only after a careful determination of the need for such information and only with appropriate safeguards described at 29 CFR 1913.10(i) in order to protect individual privacy. In the event that the employer requests the commissioner to wait 24 hours for the presence of medical personnel to review the records, the commissioner will do so on presentation of an affidavit that the employer has not and will not modify or change any of the records. The commissioner's examination and use of this information shall not exceed that which is necessary to accomplish the purpose for access. Personally identifiable medical information shall be retained only for so long as is needed to carry out the function for which it was sought. Personally identifiable information shall be kept secure while it is being used and shall not be released to other agencies or to the public except under certain narrowly defined circumstances outlined at 29 CFR 1913.10(m).

D. In order to implement the policies described in subsection C of this section, the rules and procedures of 29 CFR Part 1913.10, Rules of Agency Practice and Procedure Concerning Access to Employee and Medical Records, are hereby expressly incorporated by reference. When these rules and procedures are applied to the commissioner the following federal terms should be considered to read as below:

FEDERAL TERM	VOSH EQUIVALENT
AGENCY	VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
OSHA	VOSH
ASSISTANT SECRETARY	COMMISSIONER
OFFICE OF THE SOLICITOR OF LABOR	OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE	Office of the Attorney General
PRIVACY ACT	§§ 2.1-377 through 2.1-386 2.2-3800 to 2.2-3809 OF THE CODE OF VIRGINIA

16 VAC 25-60-90. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.

A. Pursuant to the Virginia Freedom of Information Act (FOIA) and with the exceptions stated in subsections B through H of this section, employers, employees and their representatives shall have access to information gathered in the course of an inspection.

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § 40.1-49.8 of the Code of Virginia shall not be disclosed for any purpose, except to the individual giving the statement.

C. All file documents contained in case files which are under investigation, and where a citation has not been issued, are not disclosable until:

1. The decision has been made not to issue citations; or
2. Six months has lapsed following the occurrence of an alleged violation.

D. Issued citations, orders of abatement and proposed penalties are public documents and are releasable upon a written request. All other file documents in cases where a citation has been issued are not disclosable until the case is a final order of the commissioner or the court, *except that once a copy of file documents in a contested case has been provided to legal counsel for the employer in response to a request for discovery, or to a third party in response to a subpoena duces tecum, such documents shall be releasable upon a written request, subject to the exclusions in this regulation and the Virginia Freedom of Information Act.*

E. Information required to be kept confidential by law shall not be disclosed by the commissioner or by any employee of the department. In particular, the following specific information is deemed to be nondisclosable:

1. The identity of and statements of an employee or employee representative who has complained of hazardous conditions to the commissioner;
2. The identities of employers, owners, operators, agents or employees interviewed during inspections and their interview statements;
3. Employee medical and personnel records obtained during VOSH inspections. Such records may be released to the employee or his duly authorized representative upon a written, and endorsed request; and
4. Employer trade secrets, commercial, and financial data.

F. The commissioner may decline to disclose a document that is excluded from the disclosure requirements of the Virginia FOIA, particularly documents and evidence related to criminal investigations, writings protected by the attorney-client privilege, documents compiled for use in litigation and personnel records.

G. An effective program of investigation and conciliation of complaints of discrimination requires confidentiality. Accordingly, disclosure of records of such complaints, investigations, and conciliations will be presumed to not serve the purposes of Title 40.1 of the Code of Virginia, except for statistical and other general information that does not reveal the identities of particular employers or employees.

H. All information gathered through participation in consultation services or training programs of the department shall be withheld from disclosure except for statistical data which does not identify individual employers.

I. The commissioner, in response to a subpoena, order, or other demand of a court or other authority in connection with a proceeding to which the department is not a party, shall not disclose any information or produce any material acquired as part of the performance of his official duties or because of his

official status without the approval of the Commissioner of Labor and Industry.

J. The commissioner shall disclose information and statistics gathered pursuant to the enforcement of Virginia's occupational safety and health laws, standards, and regulations where it has been determined that such a disclosure will serve to promote the safety, health, and welfare of employees. Any person requesting disclosure of such information and statistics should include in his written request any information that will aid the commissioner in this determination.

16 VAC 25-60-100. Complaints.

A. ~~Any~~ *An employee or other person who believes that a safety or health hazard exists in a workplace may request an inspection by giving notice to the commissioner. Written complaints signed by an employee or an authorized representative will be treated as formal complaints. Complaints by persons other than employees and authorized representatives and unsigned complaints by employees or authorized representatives shall be treated as nonformal complaints. Nonformal complaints will generally be handled by letter and formal complaints will generally result in an inspection.*

B. For purposes of this section and § 40.1-51.2(b) of the Code of Virginia, the representative(s) that will be recognized as authorized ~~by to act for employees for such action shall can~~ be:

1. A representative of the employee bargaining unit;
2. Any member of the employee's immediate family acting on behalf of the employee; or
3. A lawyer or physician retained by the employee.

C. A written complaint may be preceded by an oral complaint at which time the commissioner will either give instructions for filing the written complaint or provide forms for that purpose. Section 40.1-51.2(b) of the Code of Virginia stipulates that the written complaint follow an oral complaint by no more than two working days. However, if an oral complaint gives the commissioner reasonable grounds to believe that a serious condition or imminent danger situation exists, the commissioner may cause an inspection to be conducted as soon as possible without waiting for a written complaint.

D. A complaint should allege that a violation of safety and health laws, standards, rules, or regulations has taken place. The violation or hazard should be described with reasonable particularity.

E. ~~A complaint will be classified as formal or nonformal and be evaluated to determine whether there are reasonable grounds to believe that the violation or hazard complained of exists.~~

1. If the commissioner determines that there are no reasonable grounds for believing that the violation or hazard exists, the employer and the complainant shall be informed in writing of the reasons for this determination.
2. An employee or authorized representative may obtain review of the commissioner's determination that no

reasonable grounds for believing that the violation or hazard exists by submitting a written statement of his position with regard to the issue. Upon receipt of such written statement a further review of the matter will be made which may include a requested written statement of position from the employer, further discussions with the complainant or an informal conference with complainant or employer if requested by either party. After review of the matter, the commissioner shall affirm, modify or reverse the original determination and furnish the complainant and the employer written notification of his decision.

~~F. If the commissioner determines that the complaint is formal and offers reasonable grounds to believe that a hazard or violation exists, then an inspection will be conducted as soon as possible. Valid nonformal complaints may be resolved by letter or may result in an inspection if the commissioner determines that such complaint establishes probable cause to conduct an inspection. The commissioner's response to a complaint will either be in the form of an onsite inspection or an investigation that does not involve onsite response by the commissioner.~~

1. *Onsite inspections will normally be conducted in response to complaints alleging the following:*

- a. *The complaint was reduced to writing, is signed by a current employee or employee representative, and states the reason for the inspection request with reasonable particularity. In addition, there are reasonable grounds to believe that a violation of a safety or health standard has occurred;*
- b. *Imminent danger hazard;*
- c. *Serious hazard, which in the discretion of the commissioner requires an onsite inspection;*
- d. *Permanently disabling injury or illness related to a hazard potentially still in existence;*
- e. *The establishment has a significant history of noncompliance with VOSH laws and standards;*
- f. *The complaint identifies an establishment or an alleged hazard covered by a local or national emphasis inspection program;*
- g. *A request from a VOSH/OSHA discrimination investigator to conduct an inspection in response to a complaint initially filed with the investigator; or*
- h. *The employer fails to provide an adequate response to a VOSH investigation contact, or the complainant provides evidence that the employer's response is false, incorrect, incomplete or does not adequately address the hazard.*

2. *A complaint investigation, which does not involve onsite activity, shall normally be conducted for all complaints that do not meet the criteria listed in subdivision 1 of this subsection.*

3. *The commissioner reserves the right, for good cause shown, to initiate an inspection with regard to certain complaints that do not meet the criteria listed in subdivision*

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1 of this subsection; as well as to decline to conduct an inspection and instead conduct an investigation, for good cause shown, when certain complaints are found to otherwise meet the criteria listed in subdivision 1 of this subsection.

G. If there are several complaints to be investigated, the commissioner may prioritize them by considering such factors as the gravity of the danger alleged and the number of exposed employees.

H. At the beginning of the inspection the employer shall be provided with a copy of the written complaint. The complainant's name shall be deleted and any other information which would identify the complainant shall be reworded or deleted so as to protect the complainant's identity.

I. An inspection pursuant to a complaint may cover the entire operation of the employer, particularly if it appears to the commissioner that a full inspection is warranted. However, if there has been a recent inspection of the worksite or if there is reason to believe that the alleged violation or hazard concerns only a limited area or aspect of the employer's operation, the inspection may be limited accordingly.

J. After an inspection based on a complaint, the commissioner shall inform the complainant in writing whether a citation has been issued and briefly set forth the reasons if not. The commissioner shall provide the complainant with a copy of any resulting citation issued to the employer.

16 VAC 25-60-120. General industry standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly or by reference, from 29 CFR Part 1910 shall apply by their own terms to all employers and employees at places of employment covered by the Virginia State Plan for Occupational Safety and Health.

The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in 29 CFR Part 1910. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

16 VAC 25-60-130. Construction industry standards.

The occupational safety or health standards adopted as rules or regulations by the Virginia Safety and Health Codes Board either directly, or by reference, from 29 CFR Part 1926 shall apply by their own terms to all employers and employees engaged in either construction work or construction related activities covered by the Virginia State Plan for Occupational Safety and Health.

The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and

maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent requirement in 29 CFR Part 1926. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

1. For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, ~~tunnelling~~ tunneling, and electrical work. Construction does not include maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.

2. Certain standards of 29 CFR Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

3. The standards adopted from 29 CFR Part 1910.19 and 29 CFR Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.

16 VAC 25-60-140. Agriculture standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1910 and 29 CFR Part 1928 shall apply by their own terms to all employers and employees engaged in either agriculture or agriculture related activities covered by the Virginia State Plan for Occupational Safety and Health.

For the purposes of applicability of such Part 1910 and Part 1928 standards, the key criteria utilized to make a decision shall be the activities taking place at the worksite, not the primary business of the employer. Agricultural operations shall generally include any operation involved in the growing or harvesting of crops or the raising of livestock or poultry, or activities integrally related to agriculture, conducted by a farmer or agricultural employer on sites such as farms, ranches, orchards, dairy farms or similar establishments. Agricultural operations do not include construction work as described in subdivision 1 of 16 VAC 25-60-130, nor does it include operations or activities substantially similar to those that occur in a general industry setting and are therefore not unique and integrally related to agriculture.

The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in 29 CFR Part 1910 or 29 CFR Part 1928. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

16 VAC 25-60-150. Maritime standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1915 and, 29 CFR Part 1917, 29 CFR Part 1918 and 29 CFR Part 1919 shall apply by their own terms to all public sector employers and employees engaged in maritime related activities covered by the Virginia State Plan for Occupational Safety and Health.

The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in Part 1915, 1917, 1918 or 1919. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

16 VAC 25-60-190. General provisions.

A. Any employer or group of employers desiring a permanent or temporary variance from a standard or regulation pertaining to occupational safety and health may file with the commissioner a written application which shall be subject to the following policies:

1. A request for a variance shall not preclude or stay a citation or bill of complaint for violation of a safety or health standard;
2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner;
3. An employer, or group of employers, who has applied for a variance from the U.S. Department of Labor, and whose application has been denied on its merits, shall not be granted a variance by the commissioner unless there is a showing of changed circumstances significantly affecting the basis upon which the variance was originally denied;
4. An employer to whom the U.S. Secretary of Labor has granted a variance under OSHA provisions shall document this variance to the commissioner. In such cases, unless compelling local circumstances dictate otherwise, the variance shall be honored by the commissioner without the necessity of following the formal requirements which would

otherwise be applicable. In addition, the commissioner will not withdraw a citation for violation of a standard for which the Secretary of Labor has granted a variance unless the commissioner previously received notice of and decided to honor the variance; and

5. Incomplete applications will be returned within 30 days to the applicant with a statement indicating the reason or reasons that the application was found to be incomplete.

B. In addition to the information specified in 16 VAC 25-60-200 A and 16 VAC 25-60-210 A, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with 16 VAC 25-60-40, a summary of the application which indicates where a full copy of the application may be examined;

2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219-4101. Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."

3. A statement indicating whether an application for a variance from the same standard or rule has been made to any federal agency or to an agency of another state. If such an application has been made, the name and address of each agency contacted shall be included.

C. Upon receipt of a complete application for a variance, the commissioner shall publish a notice of the request in a newspaper of statewide circulation within 30 days after receipt, advising that public comments will be accepted for 30 days and that an informal hearing may be requested in conformance with subsection D of this section. Further, the commissioner may initiate an inspection of the establishment in regard to the variance request.

D. If within 30 days of the publication of notice the commissioner receives a request to be heard on the variance from the employer, affected employees, the employee representative, or other employers affected by the same standard or regulation, the commissioner will schedule a hearing with the party or parties wishing to be heard and the employer requesting the variance. The commissioner may also schedule a hearing upon his own motion. The hearing will be held within a reasonable time and will be conducted informally in accordance with §§ 2.2-4019 and 2.2-4021 of the Code of Virginia unless the commissioner finds that there is a

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substantial reason to proceed under the formal provisions of § 2.2-4020 of the Code of Virginia.

E. If the commissioner has not been petitioned for a hearing on the variance application, a decision on the application may be made promptly after the close of the period for public comments. This decision will be based upon the information contained in the application, the report of any variance inspection made concerning the application, any other pertinent staff reports, federal OSHA comments or public records, and any written data and views submitted by employees, employee representatives, other employers, or the public.

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either 16 VAC 25-60-200 B 4 or 16 VAC 25-60-210 B 4.

1. The commissioner shall advise the employer in writing of the decision and shall send a copy to the employee representative if applicable. If the variance is granted, a notice of the decision will be published in a newspaper of statewide circulation.

2. The employer shall post a copy of the commissioner's decision in accordance with 16 VAC 25-60-40.

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of 16 VAC 25-60-40.

H. The board shall sustain, reverse, or modify the commissioner's decision based upon consideration of the evidence in the record upon which the commissioner's decision was made and the views and arguments presented as provided above. The burden shall be on the party filing the appeal to designate and demonstrate any error by the commissioner which would justify reversal or modification of the decision. The issues to be considered by the board shall be those issues that could be considered by a court reviewing agency action in accordance with § 2.2-4027 of the Code of Virginia. All parties involved shall be advised of the board's decision within 10 working days after the hearing of the appeal.

16 VAC 25-60-260. Issuance of citation and proposed penalty.

A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the Code of Virginia or the appropriate rule, regulation,

or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The citation will contain substantially the following: "NOTICE: This citation will become a final order of the commissioner unless contested within fifteen working days from the date of receipt by the employer." The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.

1. No citation may be issued after the expiration of six months following the occurrence of any alleged violation. The six-month time frame is deemed to be tolled on the date the citation is issued by the commissioner, without regard for when the citation is received by the employer. For purposes of calculating the six-month time frame for citation issuance, the following requirements shall apply:

a. The six-month time frame begins to run on the day after the incident or event occurred or notice was received by the commissioner (as specified below), in accordance with § 1-210 A of the Code of Virginia. The word "month" shall be construed to mean one calendar month in accordance with § 1-223 of the Code of Virginia.

b. An alleged violation is deemed to have "occurred" on the day it was initially created by commission or omission on the part of the creating employer, and every day thereafter that it remains in existence uncorrected.

c. Notwithstanding subdivision 1 b of this subsection, if an employer fails to notify the commissioner of any work-related incident resulting in a fatality or in the in-patient hospitalization of three or more persons within eight hours of such occurrence as required by § 40.1-51.1 D of the Code of Virginia, the six-month time frame shall not be deemed to commence until the commissioner receives actual notice of the incident.

d. Notwithstanding subdivision 1 b of this subsection, if the commissioner is first notified of a work-related incident resulting in an injury or illness to an employee(s) through receipt of an Employer's Accident Report (EAR) form from the Virginia Workers' Compensation Commission as provided in § 65.2-900 of the Code of Virginia, the six-month time frame shall not be deemed to commence until the commissioner actually receives the EAR form.

e. Notwithstanding subdivision 1 b of this subsection, if the commissioner is first notified of a work-related hazard, or incident resulting in an injury or illness to an employee(s), through receipt of a complaint in accordance with 16 VAC 25-60-100 or referral, the six-month time frame shall not be deemed to commence until the commissioner actually receives the complaint or referral.

B. A citation issued under subsection A to an employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided with the proper training and equipment to prevent such a violation;

2. Work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer and have been effectively enforced when such a violation has been discovered;

3. The failure of employees to observe work rules led to the violation; and

4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B only, the term "employee" shall not include any officer, management official or supervisor having direction, management control or custody of any place of employment which was the subject of the violative condition cited.

D. The penalties as set forth in § 40.1-49.4 of the Code of Virginia shall also apply to violations relating to the requirements for record keeping, reports or other documents filed or required to be maintained and to posting requirements.

E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.

F. On multi-employer worksites for all covered industries, citations shall normally be issued to an employer whose employee is exposed to an occupational hazard (the exposing employer). Additionally, the following employers shall normally be cited, whether or not their own employees are exposed:

1. *The employer who actually creates the hazard (the creating employer);*

2. *The employer who is either:*

a. Responsible, by contract or through actual practice, for safety and health conditions on the entire worksite, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or

b. Responsible, by contract or through actual practice, for safety and health conditions for a specific area of the worksite, or specific work practice, or specific phase of a construction project, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or

3. *The employer who has the responsibility for actually correcting the hazard (the correcting employer).*

G. *A citation issued under subsection F of this section to an exposing employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:*

1. *The employer did not create the hazard;*

2. *The employer did not have the responsibility or the authority to have the hazard corrected;*

3. *The employer did not have the ability to correct or remove the hazard;*

4. *The employer can demonstrate that the creating, the controlling and/or the correcting employers, as appropriate, have been specifically notified of the hazards to which his employees were exposed;*

5. *The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;*

6. *Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard; [~~or~~ and]*

7. *When extreme circumstances justify it, the exposing employer shall have removed his employees from the job.*

16 VAC 25-60-300. Contest proceedings applicable to the Commonwealth.

A. Where the informal conference has failed to resolve any controversies arising from a citation issued to the Commonwealth or one of its agencies, and a timely notice of contest has been received, the Commissioner of Labor and Industry shall refer the case to the ~~Attorney General~~ Governor, whose written decision on the contested matter shall become a final order of the commissioner.

B. Whenever the Commonwealth or any of its agencies fails to abate a violation within the time provided in an appropriate final order, the Commissioner of Labor and Industry shall formally petition for redress as follows: For violations in the Department of Law, to the Attorney General; for violations in the Office of the Lieutenant Governor, to the Lieutenant Governor; for violations otherwise in the executive branch, to the appropriate cabinet secretary; for violations in the State Corporation Commission, to a judge of the commission; for violations in the Department of Workers' Compensation, to the Chairman of the Workers' Compensation Commission; for violations in the legislative branch of government, to the Chairman of the Senate Committee on Commerce and Labor; for violations in the judicial branch, to the chief judge of the circuit court or to the Chief Justice of the Supreme Court. Where the violation cannot be timely resolved by this petition, the commissioner shall bring the matter to the Governor for resolution.

C. Where abatement of a violation will require the appropriation of funds, the commissioner shall cooperate with the appropriate agency head in seeking such an appropriation; where the commissioner determines that an emergency exists, the commissioner shall petition the governor for funds from the Civil Contingency Fund or other appropriate source.

16 VAC 25-60-320. Extension of abatement time.

A. Where an extension of abatement is sought concerning a final order of the commissioner or of a court, the extension can be granted as an exercise of the enforcement discretion of the commissioner. While the extension is in effect the commissioner will not seek to cite the employer for failure to abate the violation in question. The employer shall carry the burden of proof to show that an extension should be granted.

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B. The commissioner will consider a written petition for an extension of abatement time if the petition is mailed to or received by the commissioner prior to the expiration of the established abatement time.

C. A written petition requesting an extension of abatement time shall include the following information:

1. All steps taken by the employer, and the dates such actions were taken, in an effort to achieve compliance during the prescribed abatement period;
2. The specific additional abatement time necessary in order to achieve compliance;
3. The reasons such additional time is necessary, such as the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;
4. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period; and
5. A certification that a copy of the petition has been posted and served on the authorized representative of affected employees, if there is one, in accordance with 16 VAC 25-60-40, and a certification of the date upon which such posting and service was made.

D. A written petition requesting an extension of abatement which is filed with the commissioner after expiration of the established abatement time will be accepted only if the petition contains an explanation satisfactory to the commissioner as to why the petition could not have been filed in a timely manner.

1. The employer is to notify the commissioner as soon as possible.
2. Notification of the exceptional circumstances which prevents compliance within the original abatement period shall accompany a written petition which includes all information required in subsection C of this section.

E. The commissioner will not make a decision regarding such a petition until the expiration of 15 working days from the date the petition was posted or served.

F. Affected employees, or their representative, may file a written objection to a petition for extension of abatement time. Such objections must be received by the commissioner within 10 working days of the date of posting of the employer's petition. Failure to object within the specified time period shall constitute a waiver of any right to object to the request.

G. When affected employees, or their representatives object to the petition, the commissioner will attempt to resolve the issue in accordance with 16 VAC 25-60-330 ~~of this chapter~~. If the matter is not settled or settlement does not appear probable, ~~the Commissioner of Labor and Industry will hear the objections will be heard in the manner set forth at in subsection I below of this section.~~

H. The employer or an affected employee may seek review of an adverse decision regarding the petition for extension of

abatement to the Commissioner of Labor and Industry within five working days after receipt of the commissioner's decision.

I. An employee's objection not resolved under subsection G of this section or an employer or employee appeal under subsection H ~~of this section~~ will be heard ~~by the Commissioner of Labor and Industry~~ using the procedures of §§ 2.2-4019 and 2.2-4021 of the Code of Virginia. Burden of proof for a hearing under subsection G ~~of this section~~ shall lie with the employer. Burden of proof for an appeal under subsection H ~~of this section~~ shall lie with the party seeking review.

1. All parties shall be advised of the time and place of the hearing by the commissioner.
2. ~~Within 15 working days of the hearing,~~ All parties will be advised of the ~~Commissioner of Labor and Industry's~~ decision *within 15 working days of the hearing.*
3. ~~Since the issue is whether the Commissioner of Labor and Industry will exercise his enforcement discretion, no further appeal is available.~~

16 VAC 25-60-340. Settlement.

A. Settlement negotiations may be held for the purpose of resolving any dispute regarding an inspection, citation, order of abatement, proposed penalty, or any other matter involving potential litigation. Settlement is encouraged at any stage of a proceeding until foreclosed by an order becoming final. It is the policy of the commissioner that the primary goal of all occupational safety and health activity is the protection of worker safety, health and welfare; all settlements shall be guided by this policy.

B. Settlement negotiations will ordinarily take place in the medium of an informal conference. Employees shall be given notice of scheduled settlement discussions and shall be given opportunity to participate in the manner provided for in 16 VAC 25-60-330 E.

C. Where a settlement with the employer is reached before the 15th working day after receipt of a citation, order of abatement, or proposed civil penalty, and no notice of contest has been filed, the commissioner shall forthwith ~~amend~~ *prepare a settlement agreement noting any changes to* the citation, order of abatement, or proposed civil penalty, as agreed. ~~The amended citation shall bear a title to indicate that it has been amended and the amended citation or an accompanying agreement shall contain a statement to the following effect: "This citation has been amended by agreement between the commissioner and the employer named above. As part of the written agreement, the employer has waived his right to file a notice of contest to this order. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."~~

D. Following receipt of an employer's timely notice of contest, the commissioner will immediately notify the appropriate Commonwealth's Attorney and may delay the initiation of judicial proceedings until settlement opportunities have been exhausted.

1. During this period, the commissioner may agree to amend the citation, order of abatement, or proposed civil penalty through the issuance of an amended citation. Every such amended citation shall bear a title to indicate that it has been amended and the amended citation or the accompanying. The settlement agreement shall contain a statement to the following effect: "This amended citation is being issued as a result of a settlement between the commissioner and the employer. The employer, by his signature below, agrees to withdraw his notice of contest filed in this matter and not to contest the amended citation. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."

2. At the end of this period, if settlement negotiations are not successful, the commissioner will initiate judicial proceedings by causing a bill of complaint to be filed and turning over the contested case to the Commonwealth's Attorney.

E. Employees or their representative have the right to contest abatement orders arising out of settlement negotiations if the notice is timely filed with the commissioner within 15 working days of issuance of the amended citation agreement and abatement order. Upon receipt of a timely notice of contest the commissioner will initiate judicial proceedings.

F. After a bill of complaint has been filed, any settlement shall be handled through the appropriate Commonwealth's Attorney and shall be embodied in a proposed order and presented for approval to the court before which the matter is pending. Every such order shall bear the signatures of the parties or their counsel; shall provide for abatement of any violation for which the citation is not vacated; shall provide that the employer's agreement not be construed as an admission of civil liability; and may permit the commissioner, when good cause is shown by the employer, to extend any abatement period contained within the order.

VA.R. Doc. No. R05-256; Filed August 1, 2006, 3:40 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Title of Regulation: **18 VAC 41-50. Tattooing Regulations (adding 18 VAC 41-50-10 through [18 VAC 41-50-220 18 VAC 41-50-420]).**

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

Effective Date: October 1, 2006.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail william.ferguson@dpor.virginia.gov.

Summary:

The regulations establish provisions for the licensing of tattooers, parlors, salons, and schools under the Board for Barbers and Cosmetology as directed by Chapter 869 of the 2002 Acts of Assembly. The regulations establish (i) definitions of words and terms relative to the practice of providing tattooing services that will ensure that licensees understand the scope and limitations of their profession; (ii) general requirements for obtaining a license to provide services as a tattooer or limited term tattooer or a certification to be a tattooing instructor or permanent cosmetic tattooing instructor; (iii) general requirements for becoming a tattooing apprenticeship sponsor; (iv) general requirements for obtaining a license to operate a tattoo parlor or permanent cosmetic tattoo salon; (v) general requirements for obtaining a license to operate a tattooing school or permanent cosmetic tattooing school; (vi) detailed curriculum and training requirements to include minimum clock hours acceptable to sit for the board-approved examination; (vii) fees for initial, renewal, and reinstatement applications for tattooers, instructors, tattoo parlors, permanent cosmetic tattoo salons, tattooing schools, and permanent cosmetic tattooing schools; (viii) sanitation and safety standards for tattoo parlors or permanent cosmetic tattoo salons that address disinfection and storage of implements, sanitation of equipment, and safety standards pertaining to the use of chemical products, the proper handling of blood spills, and client health guidelines; (ix) measures to be taken to ensure that clients are qualified to receive tattooing services in compliance with § 18.2-371.3 of the Code of Virginia pertaining to minimum age; and (x) requirements for obtaining certain disclosures and maintenance of records of notification to the client pertaining to risks associated with receiving tattooing services.

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 50.
TATTOOING REGULATIONS.

PART I.
GENERAL.

18 VAC 41-50-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Apprenticeship program" means an approved tattooing training program conducted by an approved apprenticeship sponsor.

"Apprenticeship sponsor" means an individual approved to conduct tattooing apprenticeship training who meets the qualifications in 18 VAC 41-50-70.

"Aseptic technique" means a hygienic practice that prevents and hinders the direct transfer of microorganisms, regardless

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of pathogenicity, from one person or place to another person or place.

["Direct supervision" means that a Virginia licensed tattooer shall be present in the tattoo parlor at all times when services are being performed by an apprentice, that a Virginia licensed tattooing instructor shall be present in the tattooing school at all times when services are being performed by a student, or that a Virginia licensed permanent cosmetic tattooing instructor shall be present in the permanent cosmetic tattooing school at all times when services are being performed by a student.]

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Gratuitous services" as used in § 54.1-701.5 of the Code of Virginia means providing tattooing services without receiving compensation or reward, or obligation. Gratuitous services do not include services provided at no charge when goods are purchased.

"Licensee" means any person, partnership, association, limited liability company, or corporation holding a license issued by the Board for Barbers and Cosmetology as defined in § 54.1-700 of the Code of Virginia.

["Limited term tattooer" means a tattooer licensed to perform tattooing for a maximum of five consecutive days in an organized event or in a Virginia licensed tattoo parlor.

"Limited term tattoo parlor" means a tattoo parlor temporary location licensed to operate for a maximum of five consecutive days.

"Master permanent cosmetic tattooer" means any person who for compensation practices permanent cosmetic tattooing known in the industry as advanced permanent cosmetic tattooing including but not limited to cheek blush, eye shadow, breast and scar repigmentation or camouflage.

"Permanent cosmetic tattoo salon" means any place in which permanent cosmetic tattooing is offered or practiced for compensation.

"Permanent cosmetic tattooer" means any person who for compensation practices permanent cosmetic tattooing known in the industry as basic permanent cosmetic tattooing including but not limited to eyebrows, eyeliners, lip coloring, lip liners, or full lips.

"Permanent cosmetic tattooing" means placing marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin on the face, including but not limited to eyebrows, eyeliners, lip coloring, lip liners, full lips, cheek blush, eye shadow, and on the body for breast and scar repigmentation or camouflage; also known as permanent make-up or micropigmentation.

"Permanent cosmetic tattooing instructor" means a person who has been certified by the board who meets the competency standards of the board as an instructor of permanent cosmetic tattooing.

"Permanent cosmetic tattooing school" means a place or establishment licensed by the board to accept and train

students and offers a permanent cosmetic tattooing curriculum approved by the board.]

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Sterilization area" means a separate room or area separate from workstations with restricted client access in which tattooing instruments are cleaned, disinfected, and sterilized.

["Tattooing instructor" means a person who has been certified by the board who meets the competency standards of the board as an instructor of tattooing.]

"Temporary location" means a fixed location at which tattooing is performed for a specified length of time of not more than [seven five] days in conjunction with a single event or celebration.

PART II. ENTRY.

18 VAC 41-50-20. General requirements for tattooer [, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer].

A. In order to receive a license as a tattooer [, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer] in compliance with § 54.1-703 of the Code of Virginia, an applicant must meet the following qualifications:

1. The applicant must be in good standing as a tattooer [, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer] in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a tattooer [, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer]. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as a tattooer [, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer].

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia tattooing license laws and the board's tattooing regulations.

4. In accordance with § 54.1-204 of the Code of Virginia, the applicant must not have been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a

certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board approved examination, administered either by the board or by a designated testing service.

6. Persons who (i) make application [~~within one year after the effective date of this chapter~~ for licensure between October 1, 2006, and September 30, 2007]; (ii) have completed [~~five~~ three] years of documented work experience within the preceding [~~eight~~ five] years as a tattooer; and (iii) have completed a minimum of five hours of health education to include but not limited to bloodborne disease, sterilization, and aseptic techniques related to tattooing and first aid and CPR that is acceptable to the board are not required to complete subdivision 5 of this subsection.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia.

[a.] Any person completing an approved tattooing apprenticeship program in a Virginia licensed tattoo parlor [or completing an approved tattooing training program in a Virginia licensed school of tattooing, or completing a permanent cosmetic tattooing training program in a Virginia licensed permanent cosmetic tattooing school] shall be eligible to sit for the [applicable] examination.

[b. Any person completing master permanent cosmetic training that is acceptable to the board shall be eligible to sit for the examination. Training should be conducted in a permanent facility.]

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

[a.] Any person completing a tattooing [or permanent cosmetic tattooing] training or [tattooing] apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training or apprenticeship to be eligible for examination. [If less than required hours of tattooing or permanent cosmetic tattooing training or tattooing apprenticeship was completed, an applicant must submit (i) documentation acceptable to the board verifying the completion of a substantially equivalent tattooing training or tattooing apprenticeship or permanent cosmetic tattooing training or documentation of three years of work experience within the preceding five years as a tattooer, and (ii) documentation of completion of a minimum of five hours of health education to include but not limited to blood-borne disease, sterilization, and aseptic techniques related to tattooing and first aid and CPR that is acceptable to the board in order to be eligible for examination.

b. Any person completing master permanent cosmetic training that is acceptable to the board shall be eligible to sit for the examination. Training should be conducted in a permanent facility.]

18 VAC 41-50-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as a tattooer [, permanent cosmetic tattooer, or master permanent cosmetic tattooer] in any other state or jurisdiction of the United States and who has completed a training or apprenticeship program and an examination that is substantially equivalent to that required by this chapter may be issued a tattooer license [, permanent cosmetic tattooer license, or master permanent cosmetic tattooer license] without an examination. The applicant must also meet the requirements set forth in 18 VAC 41-50-20 A 1 through A 4.

18 VAC 41-50-40. Examination requirements and fees.

A. Applicants for initial licensure shall pass an examination approved by the board. The examinations may be administered by the board or by a designated testing service.

B. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

18 VAC 41-50-50. Reexamination requirements.

Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.

18 VAC 41-50-60. Examination administration.

A. The examinations may be administered by the board or the designated testing service.

B. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed \$225 per candidate.

18 VAC 41-50-70. General requirements for a tattooing apprenticeship sponsor.

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section may be eligible to sponsor a tattooing apprentice if the person:

1. Holds a current Virginia tattooer license;

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2. Provides documentation of legally practicing tattooing for at least [~~seven~~ five] years; and

3. Provides documentation indicating that he is in good standing in all jurisdictions where the practice of tattooing is regulated.

B. Apprenticeship sponsors shall be required to maintain a tattooer license.

C. Apprenticeship sponsors shall ensure compliance with the 1500 hour tattooing apprenticeship program and tattooing apprenticeship standards.

18 VAC 41-50-80. [Tattoo] parlor [, limited term tattoo parlor, or permanent cosmetic tattoo salon] license.

A. Any individual wishing to operate a tattoo parlor [, limited term tattoo parlor, or permanent cosmetic tattoo salon] shall obtain a tattoo parlor license [, limited term tattoo parlor license, or permanent cosmetic tattoo salon license] in compliance with § 54.1-704.1 of the Code of Virginia.

B. A tattoo parlor license [, limited term tattoo parlor license, or permanent cosmetic tattoo salon license] shall not be transferable and shall bear the same name and address of the business. Any changes in the name, address, or ownership of the parlor [or salon] shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

C. In the event of a closing of a tattoo parlor [or permanent cosmetic tattoo salon], the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned by the owners to the board.

D. Any individual wishing to operate a tattoo parlor in a temporary location must have a tattoo parlor license [or limited term tattoo parlor license] issued by the board.

[E. A limited term tattoo parlor license is effective for five consecutive days prior to the expiration date.

F. A person or entity may obtain a maximum of five limited term tattoo parlor licenses within a calendar year.

G. A person or entity may obtain a maximum of two limited term tattoo parlor licenses within a 30 consecutive days time period.]

[18 VAC 41-50-90. Limited term tattooer license.

A. A limited term tattooer license is effective for five consecutive days prior to the expiration date.

B. A person may obtain a maximum of five limited term tattooer licenses within a calendar year.

C. A person may obtain a maximum of two limited term tattooer licenses within a 30 consecutive days time period.

D. A limited term tattooer applicant must meet the following qualifications:

1. Requirements set forth in 18 VAC 41-50-20 A 1 through A 4.

2. Documentation of health education knowledge to include but not limited to blood-borne disease, sterilization, and aseptic techniques related to tattooing, and first aid and CPR that is acceptable to the board.

E. A limited term tattooer applicant is not required to complete 18 VAC 41-50-20 A 5.

18 VAC 41-50-100. School license.

A. Any individual wishing to operate a tattooing school or permanent cosmetic tattooing school shall obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia.

B. A tattooing school license or permanent cosmetic tattooing school license shall not be transferable and shall bear the same name and address as the school. Any changes in the name or address of the school shall be reported to the board in writing within 30 days of such change. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

D. In the event of a school closing, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned.

18 VAC 41-50-110. Tattooing instructor certificate.

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a tattooing instructor certificate if the person:

1. Holds a current Virginia tattooer license; and
2. Provides documentation of three years of work experience within the past five years.

B. Tattooing instructors shall be required to maintain a tattooer license.

18 VAC 41-50-120. Permanent cosmetic tattooing instructor certificate.

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a permanent cosmetic tattooing instructor certificate if the person:

1. Holds a current Virginia permanent cosmetic tattooer license or master permanent cosmetic tattooer license; and
2. Provides documentation of three years of work experience within the past five years.

B. Permanent cosmetic tattooing instructors shall be required to maintain a permanent cosmetic tattooer license or master permanent cosmetic tattooer license.]

PART III.
FEES.

[~~18 VAC 41-50-90~~ 18 VAC 41-50-130]. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
<i>Individuals:</i>		
Application	\$55	With application
License by Endorsement	\$55	With application
Renewal	\$55	With renewal card prior to expiration date
Reinstatement	\$110* *includes \$55 renewal fee and \$55 reinstatement fee	With reinstatement application
<i>[Instructors:</i>		
Application	\$60	With application
License by Endorsement	\$60	With application
Renewal	\$60	With renewal card prior to expiration date
Reinstatement	\$120* *includes \$60 renewal fee and \$60 reinstatement fee	With reinstatement application]
<i>Parlors [or salons]:</i>		
Application	\$90	With application
Renewal	\$90	With renewal card prior to expiration date
Reinstatement	\$180* *includes \$90 renewal fee and \$90 reinstatement fee	With reinstatement application
<i>[Schools:</i>		
Application	\$120	With application
Renewal	\$120	With renewal card prior to expiration date
Reinstatement	\$240* *includes \$120 renewal fee and \$120 reinstatement fee	With reinstatement application]

[~~18 VAC 41-50-100~~ 18 VAC 41-50-140]. Refunds.

All fees are nonrefundable and shall not be prorated.

PART IV.
RENEWAL/REINSTATEMENT.

[~~18 VAC 41-50-110~~ 18 VAC 41-50-150]. License renewal required.

All tattooer licenses [~~and~~ , tattoo parlor licenses [, tattooing instructors licenses, tattooing schools licenses, permanent cosmetic tattooer licenses, master permanent cosmetic tattooer licenses, permanent cosmetic tattoo salon licenses, and permanent cosmetic tattooing schools licenses] shall expire two years from the last day of the month in which they were issued.

[~~18 VAC 41-50-120~~ 18 VAC 41-50-160]. Continuing education requirement.

All licensed tattooers [, permanent cosmetic tattooers, and master permanent cosmetic tattooers] shall be required to satisfactorily complete a minimum of five hours of health education to include but not limited to bloodborne disease, sterilization, and aseptic techniques related to tattooing, first aid and CPR during their licensed term. Documentation of training completion shall be provided at the time of renewal along with the required fee.

[~~18 VAC 41-50-130~~ 18 VAC 41-50-170]. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the old license may be submitted as evidence of intent to renew, along with the required fee.

[~~18 VAC 41-50-140~~ 18 VAC 41-50-180]. Failure to renew.

A. When a tattooer [, permanent cosmetic tattooer, or master permanent cosmetic tattooer] fails to renew his license within 30 days following its expiration date, the licensee shall meet the renewal requirements [~~prescribed in 18 VAC 41-50-130,~~] and apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.

B. When a tattooer [, permanent cosmetic tattooer, or master permanent cosmetic tattooer] fails to renew his license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant, shall meet all current application requirements, shall pass the board's current examination and shall receive a new license.

C. When a tattoo parlor [or permanent cosmetic tattoo salon] fails to renew its license within 30 days following the expiration date, it shall be required to apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.

D. When a tattoo parlor [or permanent cosmetic tattoo salon] fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.

[E. When a tattooing school or permanent cosmetic tattooing school fails to renew its license within 30 days following the expiration date, the licensee shall be required to apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.

F. When a tattooing school or permanent cosmetic tattooing school fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To

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resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.]

[~~E. G.~~] The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

[~~F. H.~~] When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

[~~G. I.~~] A licensee who reinstates his license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

[~~H. J.~~] A licensee who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of time for which the individual was licensed.

PART V. APPRENTICESHIP PROGRAMS.

[~~18 VAC 41-50-150~~ **18 VAC 41-50-190**]. **General requirements.**

A. Any person desiring to enroll in the tattooing apprenticeship program shall be required to provide documentation of satisfactory completion of a minimum of five hours of health education to include but not limited to bloodborne disease, sterilization, and aseptic techniques related to tattooing, and first aid and CPR.

B. Any tattooer desiring approval to perform the duties of an apprenticeship sponsor and offer the board's tattooing apprenticeship program shall meet the requirements of 18 VAC 41-50-70.

[C. All apprenticeship training shall be conducted in a tattoo parlor that has met the requirements of 18 VAC 41-50-80.]

[~~18 VAC 41-50-160~~ **18 VAC 41-50-200**]. **Apprenticeship curriculum requirements.**

Apprenticeship curriculum requirements are as follows:

1. Microbiology.

- a. Microorganisms, viruses, bacteria, fungi;
- b. Transmission cycle of infectious diseases; and
- c. Characteristics of antimicrobial agents.

2. Immunization.

- a. Types of immunizations;
- b. Hepatitis A - G transmission and immunization;
- c. HIV/AIDS;

d. Tetanus, streptococcal, zoonotic, tuberculosis, pneumococcal, and influenza;

e. Measles, mumps, and rubella;

f. Vaccines and immunization; and

g. General preventative measures to be taken to protect the [~~tattooist~~ tattooer] and client.

3. Sanitation and disinfection.

a. Definition of terms.

(1) Sterilization;

(2) Disinfection and disinfectant;

(3) Sterilizer or sterilant;

(4) Antiseptic;

(5) Germicide;

(6) Decontamination; and

(7) Sanitation.

b. The use of steam sterilization equipment and techniques;

c. The use of chemical agents, antiseptics, disinfectants, and fumigants;

d. The use of sanitation equipment;

e. Preservice sanitation procedure; and

f. Post-service sanitation procedure.

4. Safety.

a. Proper needle handling and disposal;

b. How to avoid overexposure to chemicals;

c. The use of Material Safety Data Sheets;

d. Blood spill procedures;

e. Equipment and instrument storage; and

f. First aid and CPR.

5. Bloodborne pathogen standards.

a. OSHA and CDC bloodborne pathogen standards;

b. Control plan for bloodborne pathogens;

c. Exposure control plan for tattooers;

d. Overview of compliance requirements; and

e. Disorders and when not to service a client.

6. Professional standards.

a. History of tattooing;

b. Ethics;

c. Recordkeeping:

(1) Client health history;

(2) Consent forms; and

(3) [~~HIPPA~~ HIPAA (Health Insurance Portability and Accountability Act of 1996 Privacy Rule)] Standards.

d. Preparing station, making appointments, parlor ethics:

(1) Maintaining professional appearance, notifying clients of schedule changes; and

(2) Promoting services of the parlor and establishing clientele.

e. Parlor management:

(1) Licensing requirements; and

(2) Taxes.

[f. Supplies:

(1) Usages;

(2) Ordering; and

(3) Storage.]

7. Tattooing.

a. Client consultation;

b. Client health form;

c. Client disclosure form;

d. Client preparation;

e. Sanitation and safety precautions;

f. Implement selection and use;

g. Proper use of equipment; [and]

h. Material selection and use [- ;]

[i. Needles;

j. Ink;

k. Machine:

(1) Construction;

(2) Adjustment; and

(3) Power supply;

l. Art, drawing; and

m. Portfolio.

8. Anatomy:

a. Understanding of skin; and

b. Parts and functions of skin.

9. Virginia tattooing laws and regulations.]

[~~18 VAC 41-50-170~~ 18 VAC 41-50-210]. Hours of instruction and performances.

A. Curriculum requirements specified in [~~18 VAC 41-50-160~~ 18 VAC 41-50-200] shall be taught over a minimum of 1500 hours as follows:

1. 350 hours shall be devoted to theory pertaining to subdivisions 1, 2, 4, 5 [~~and~~,] 6 [, 8, and 9] of [~~18 VAC 41-50-160~~ 18 VAC 41-50-200];

2. 150 hours shall be devoted to theory pertaining to subdivision 3 of [~~18 VAC 41-50-160~~ 18 VAC 41-50-200]; and

3. The remaining 1000 hours shall be devoted to practical training [to include but not limited to apprenticeship curriculum requirements] and a total of 100 performances pertaining to subdivision 7 of [~~18 VAC 41-50-160~~ 18 VAC 41-50-200].

B. An approved tattooing apprenticeship program may conduct an assessment of an apprentice's competence in the theory and practical requirements for tattooing and, based on the assessment, give a maximum of 700 hours of credit towards the requirements in subdivisions A 1 and A 3 of this section. No credit shall be allowed for the 150 hours required in subdivision A 2 of this section.

[PART VI.
TATTOOING SCHOOLS.

18 VAC 41-50-220. Applicants for tattooing school license.

Any person or entity desiring to operate a tattooing school shall submit an application to the board at least 60 days prior to the date for which approval is sought.

18 VAC 41-50-230. General requirements.

A tattooing school shall:

1. Hold a tattooing school license for each and every location.

2. Hold a tattoo parlor license if the school receives compensation for services provided in the area where practical instruction is conducted and services are provided.

3. Employ a staff of certified tattooing instructors.

4. Develop individuals for entry-level competency in tattooing.

5. Submit its curricula for board approval.

6. Inform the public that all services are performed by students if the tattooing school receives compensation for services provided in its clinic by posting a notice in the reception area of the shop or salon in plain view of the public.

7. Conduct classroom instruction in an area separate from the area where practical instruction is conducted and services are provided.

8. Conduct all instruction and training of tattooers under the direct supervision of a certified tattooing instructor.

18 VAC 41-50-240. School identification.

Each tattooing school approved by the board shall identify itself to the public as a teaching institution.

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18 VAC 41-50-250. Records.

A. Schools are required to keep upon graduation, termination or withdrawal, written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school.

B. For a period of five years after a student completes the curriculum, terminates or withdraws from the school, schools are required to provide documentation of hours and performances completed by a student upon receipt of a written request from the student.

C. Prior to a school changing ownership or a school closing, the schools are required to provide to current students documentation of hours and performances completed.

D. For a period of one year after a school changes ownership, schools are required to provide documentation of hours and performances completed by a current student upon receipt of a written request from the student.

18 VAC 41-50-260. Hours reported.

Within 30 days of the closing of a licensed tattooing school for any reason, the school shall provide a written report to the board on performances and hours of each of its students who has not completed the program.

18 VAC 41-50-270. Health education.

Any person desiring to enroll in the tattooing school shall be required to provide documentation of satisfactory completion of a minimum of five hours of health education to include but not limited to blood-borne disease, sterilization, and aseptic techniques related to tattooing, and first aid and CPR.

18 VAC 41-50-280. Tattooing school curriculum requirements.

Tattooing school curriculum requirements are as follows:

1. Microbiology.
 - a. Microorganisms, viruses, bacteria, fungus;
 - b. Transmission cycle of infectious diseases; and
 - c. Characteristics of antimicrobial agents.
2. Immunization.
 - a. Types of immunizations;
 - b. Hepatitis A - G transmission and immunization;
 - c. HIV/AIDS;
 - d. Tetanus, streptococcal, zoonotic, tuberculosis, pneumococcal, and influenza;
 - e. Measles, mumps, and rubella;
 - f. Vaccines and immunization; and
 - g. General preventative measures to be taken to protect the tattooer and client.

3. Sanitation and disinfection.

a. Definition of terms:

- (1) Sterilization;
- (2) Disinfection and disinfectant;
- (3) Sterilizer or sterilant;
- (4) Antiseptic;
- (5) Germicide;
- (6) Decontamination; and
- (7) Sanitation.

b. The use of steam sterilization equipment and techniques;

c. The use of chemical agents, antiseptics, disinfectants, and fumigants;

d. The use of sanitation equipment;

e. Preservice sanitation procedure; and

f. Postservice sanitation procedure.

4. Safety.

a. Proper needle handling and disposal;

b. How to avoid overexposure to chemicals;

c. The use of Material Safety Data Sheets;

d. Blood spill procedures;

e. Equipment and instrument storage; and

f. First aid and CPR.

5. Blood-borne pathogen standards.

a. OSHA and CDC blood-borne pathogen standards;

b. Control plan for blood-borne pathogens;

c. Exposure control plan for tattooers;

d. Overview of compliance requirements; and

e. Disorders and when not to service a client.

6. Professional standards.

a. History of tattooing;

b. Ethics;

c. Recordkeeping:

(1) Client health history;

(2) Consent forms; and

(3) HIPAA (Health Insurance Portability and Accountability Act of 1996 Privacy Rule) Standards.

d. Preparing station, making appointments, parlor ethics:

(1) Maintaining professional appearance, notifying clients of schedule changes; and

(2) Promoting services of the parlor and establishing clientele.

e. Parlor management.

(1) Licensing requirements; and

(2) Taxes.

f. Supplies.

(1) Usages;

(2) Ordering; and

(3) Storage.

7. Tattooing.

a. Client consultation;

b. Client health form;

c. Client disclosure form;

d. Client preparation;

e. Sanitation and safety precautions;

f. Implement selection and use;

g. Proper use of equipment;

h. Material selection and use;

i. Needles;

j. Ink;

k. Machine:

(1) Construction;

(2) Adjustment; and

(3) Power supply;

l. Art, drawing; and

m. Portfolio.

8. Anatomy.

a. Understanding of skin; and

b. Parts and functions of skin.

9. Virginia tattooing laws and regulations.

18 VAC 41-50-290. Hours of instruction and performances.

A. Curriculum requirements specified in 18 VAC 41-50-280 shall be taught over a minimum of 750 hours as follows:

1. 350 hours shall be devoted to theory pertaining to subdivisions 1, 2, 4, 5, 6, 8 and 9 of 18 VAC 41-50-280;

2. 150 hours shall be devoted to theory pertaining to subdivision 3 of 18 VAC 41-50-280; and

3. The remaining 250 hours shall be devoted to practical training to include but not limited to tattooing curriculum requirements and a total of 100 performances pertaining to subdivision 7 of 18 VAC 41-50-280.

B. An approved tattooing school may conduct an assessment of a student's competence in the theory and practical requirements for tattooing and, based on the assessment, give a maximum of 350 hours of credit towards the requirements in subdivisions A 1 and A 3 of this section. No credit shall be allowed for the 150 hours required in subdivision A 2 of this section.

PART VII.

PERMANENT COSMETIC TATTOOING SCHOOLS.

18 VAC 41-50-300. Applicants for permanent cosmetic tattooing school license.

Any person or entity desiring to operate a permanent cosmetic tattooing school shall submit an application to the board at least 60 days prior to the date for which approval is sought.

18 VAC 41-50-310. General requirements.

A permanent cosmetic tattooing school shall:

1. Hold a permanent cosmetic tattooing school license for each and every location.

2. Hold a permanent cosmetic tattoo salon license if the school receives compensation for services provided in the area where practical instruction is conducted and services are provided.

3. Employ a staff of certified permanent cosmetic tattooing instructors.

4. Develop individuals for entry-level competency in permanent cosmetic tattooing.

5. Submit its curricula for board approval.

6. Inform the public that all services are performed by students if the permanent cosmetic tattooing school receives compensation for services provided in its clinic by posting a notice in the reception area of the shop or salon in plain view of the public.

7. Conduct classroom instruction in an area separate from the area where practical instruction is conducted and services are provided.

8. Conduct all instruction and training of permanent cosmetic tattooers under the direct supervision of a certified permanent cosmetic tattooing instructor.

18 VAC 41-50-320. School identification.

Each permanent cosmetic tattooing school approved by the board shall identify itself to the public as a teaching institution.

18 VAC 41-50-330. Records.

A. Schools are required to keep upon graduation, termination or withdrawal, written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school.

B. For a period of five years after a student completes the curriculum, terminates or withdraws from the school, schools

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are required to provide documentation of hours and performances completed by a student upon receipt of a written request from the student.

C. Prior to a school changing ownership or a school closing, schools are required to provide to current students documentation of hours and performances completed.

D. For a period of one year after a school changes ownership, schools are required to provide documentation of hours and performances completed by a current student upon receipt of a written request from the student.

18 VAC 41-50-340. Hours reported.

Within 30 days of the closing of a licensed permanent cosmetic tattooing school for any reason, the school shall provide a written report to the board on performances and hours of each of its students who have not completed the program.

18 VAC 41-50-350. Health education.

Any person desiring to enroll in the permanent cosmetic tattooing school shall be required to provide documentation of satisfactory completion of health education on blood-borne disease.

18 VAC 41-50-360. Permanent cosmetic tattooing school curriculum requirements.

Permanent cosmetic tattooing school curriculum requirements are as follows:

1. Virginia tattooing laws and regulations.
2. Machines and devices.
 - a. Coil machine;
 - b. Hand device; and
 - c. Others devices.
3. Needles.
 - a. Types;
 - b. Uses; and
 - c. Application.
4. Anatomy.
 - a. Layers of skin;
 - b. Parts and functions of skin; and
 - c. Diseases.
5. Color theory.
 - a. Skin and pigment color; and
 - b. Handling and storage of pigments.
6. Transmission cycle of infectious diseases.
7. Immunization.
 - a. Types of immunizations; and

- b. General preventative measures to be taken to protect the tattooer and client.

8. Sanitation and disinfection.

a. Definition of terms:

- (1) Sterilization;
- (2) Disinfection and disinfectant;
- (3) Sterilizer or sterilant;
- (4) Antiseptic;
- (5) Germicide;
- (6) Decontamination; and
- (7) Sanitation.

b. The use of steam sterilization equipment and techniques;

c. The use of chemical agents, antiseptics, and disinfectants;

d. The use of sanitation equipment;

e. Preservice sanitation procedure; and

f. Postservice sanitation procedure.

9. Safety.

a. Proper needle handling and disposal;

b. Blood spill procedures;

c. Equipment and instrument storage; and

d. First aid.

10. Blood-borne pathogen standards.

a. OSHA and CDC blood-borne pathogen standards;

b. Overview of compliance requirements; and

c. Disorders and when not to service a client.

11. Anesthetics.

a. Use;

b. Types;

c. Application; and

d. Removal.

12. Equipment.

a. Gloves;

b. Masks;

c. Apron;

d. Chair;

e. Lighting; and

f. Work table.

13. Professional standards.

- a. History of permanent cosmetic tattooing;
 - b. Ethics;
 - c. Recordkeeping:
 - (1) Client health history; and
 - (2) Consent forms.
 - d. Preparing station, making appointments, salon ethics:
 - (1) Maintaining professional appearance, notifying clients of schedule changes; and
 - (2) Promoting services of the salon and establishing clientele.
 - e. Salon management:
 - (1) Licensing requirements; and
 - (2) Taxes.
14. Permanent cosmetic tattooing.
- a. Client consultation;
 - b. Client health form;
 - c. Client disclosure form;
 - d. Client preparation;
 - e. Sanitation and safety precautions;
 - f. Implement selection and use;
 - g. Proper use of equipment;
 - h. Material selection and use.
 - i. Eyebrows;
 - j. Eyeliner;
 - k. Lip coloring; and
 - l. Lip liners.

18 VAC 41-50-370. Hours of instruction and performances.

- A. Curriculum and performance requirements specified in 18 VAC 41-50-360 shall be taught over a minimum of 90 clock hours.
- B. A minimum of 50 performances shall be completed as part of the required instruction. Completion of performances are determined as follows:
 - 1. Two complete eyebrows constitutes one performance;
 - 2. Two complete eye liners constitutes one performance; and
 - 3. One complete lip liner constitutes one performance.]

PART [~~VI~~ VII].
STANDARDS OF PRACTICE.

[~~18 VAC 41-50-180~~ 18 VAC 41-50-380]. **Display of license.**

- A. Each tattoo parlor owner [or permanent cosmetic tattoo salon owner] shall ensure that all current licenses issued by the board shall be displayed in the reception area of the parlor

[or salon] or in plain view of the public. Duplicate licenses shall be posted in a like manner in every parlor [or salon] or location where the licensee provides services.

B. Each parlor owner [or permanent cosmetic tattoo salon owner] shall ensure that no licensee [, apprentice, or student] performs any service beyond the scope of practice for the applicable license.

C. Each [tattoo] parlor owner [or permanent cosmetic tattoo salon owner] shall offer to licensees the full series of Hepatitis B vaccine.

D. Each [tattoo] parlor owner [or permanent cosmetic tattoo salon owner] shall maintain a record for each licensee of [one of the following]:

- 1. Proof of completion of the full series of Hepatitis B vaccine;
- 2. Proof of immunity by blood titer; or
- 3. Written declaration of refusal of the owner's offer of a full series of Hepatitis B vaccine.

E. All licensees shall operate under the name in which the license is issued.

[~~18 VAC 41-50-190~~ 18 VAC 41-50-390]. **Physical facilities.**

A. A parlor [or salon] must be in a permanent building or portion of a building, which must be in a location permissible under local zoning codes, if any. If applicable, the parlor [or salon] shall be separated from any living quarters by complete floor to ceiling partitioning and shall contain no access to living quarters.

B. The parlor [, salon] or temporary location shall be maintained in a clean and orderly manner.

C. All facilities shall have a blood spill clean-up kit in the work area.

D. Work surfaces shall be cleaned with an EPA registered, hospital grade disinfectant. Surfaces that come in contact with blood or other body fluids shall be immediately disinfected with an EPA registered germicide solution. Appropriate personal protective equipment shall be worn during cleaning and disinfecting procedures.

E. Cabinets for the storage of instruments, dyes, pigments, single-use articles, carbon stencils and other utensils shall be provided for each operator and shall be maintained in a sanitary manner.

F. Bulk single-use articles shall be commercially packaged and handled in such a way as to protect them from contamination.

G. All materials applied to the human skin shall be from single-use articles or transferred from bulk containers to single-use containers and shall be disposed of after each use.

H. The walls, ceilings, and floors shall be kept in good repair. The tattooing area shall be constructed of smooth, hard surfaces that are nonporous, free of open holes or cracks, light colored, and easily cleaned. New parlors shall not include any dark-colored surfaces in the tattooing area. Existing

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parlors [or salons] with dark-colored surfaces in the tattooing area shall replace the dark-colored surfaces with light-colored surfaces whenever the facilities are extensively remodeled or upon relocation of the business.

I. Parlors [and , salons or] temporary locations shall have adequate lighting of at least 50-foot candles of illumination in the tattooing and sterilization areas.

J. Adequate mechanical ventilation shall be provided in the parlor.

K. Each parlor [, salon] or temporary location shall be equipped with hand-cleaning facilities for its personnel with unobstructed access to the tattooing area such that the tattooer can return to the area without having to touch anything with his hands. Hand-cleaning facilities shall be equipped either with hot and cold or tempered running water under pressure and liquid germicidal soap or with a sanitizing solution to clean hands. Hand-cleaning facilities shall be equipped with single-use towels or mechanical hand drying devices and a covered refuse container. Such facilities shall be kept clean and in good repair. All facilities must have running water and soap accessible for cleaning of hands contaminated by body fluids.

L. Animals are not permitted in the parlor, [salon,] or temporary location except for guide or service animals accompanying persons with disabilities, or nonmammalian animals in enclosed glass containers such as fish aquariums, which shall be outside of the tattooing or sterilization areas. No animals are allowed in the tattooing or sterilization areas.

M. Use of tobacco products and consumption of alcoholic beverages shall be prohibited in the tattooing or sterilization areas.

N. No food or drink will be stored or consumed in the tattooing or sterilization areas except for client's use in order to sustain optimal physical condition; such food and drink must be individually packaged.

O. If tattooing is performed where cosmetology services are provided, it shall be performed in an area that is separate and enclosed.

[P. All steam sterilizers shall be biological spore tested at least monthly.

Q. Biological spore tests shall be verified through an independent laboratory.

R. Biological spore test records shall be retained for a period of three years and made available upon request.

S. Steam sterilizers shall be used only for instruments used by the parlor's employees.]

[~~18 VAC 41-50-200~~ 18 VAC 41-50-400]. **Tattooer [or permanent cosmetic tattooer or master permanent cosmetic tattooer] responsibilities.**

A. All tattooers shall provide to the owner [one of the following]:

1. Proof of completion of the full series of Hepatitis B vaccine;

2. Proof of immunity by blood titer; or

3. Written declaration of refusal of the owner's offer of a full series of Hepatitis B vaccine.

B. All tattooers shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty.

C. All tattooers shall clean their hands thoroughly using hot or tempered water with a liquid germicidal soap or use sanitizing solution to clean hands before and after tattooing and as necessary to remove contaminants.

D. All tattooers must wear single-use examination gloves while assembling tattooing instruments and while tattooing.

E. Each time there is an interruption in the service, each time the gloves become torn or perforated, or whenever the ability of the gloves to function as a barrier is compromised [- :]

1. Gloves [~~should~~ shall] be removed and disposed of; and

2. Hands shall be cleaned and a fresh pair of gloves used.

F. Tattooers shall use standard precautions while tattooing. A tattooer diagnosed with a communicable disease shall provide to the department a written statement from a health care practitioner that the tattooer's condition no longer poses a threat to public health.

G. Tattooers with draining lesions on their hands or face will not be permitted to work until cleared by a health-care professional.

H. The area of the client's skin to be tattooed shall be cleaned with an approved germicidal soap according to label directions.

I. Tattooing inks and dyes shall be placed in a single-use disposable container for each client. Following the procedure, the unused contents and container will be properly disposed of.

J. If shaving is required, razors shall be single-use and disposed of in a puncture resistant container.

K. Each tattooer performing any tattooing procedures in the parlor [or salon] shall have the education [;] training and experience, or any combination thereof, to practice aseptic technique and prevent the transmission of bloodborne pathogens. All procedures shall be performed using aseptic technique.

L. A set of individual, sterilized needles shall be used for each client. Single-use disposable instruments shall be disposed of in a puncture resistant container.

M. Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water soap and then sterilized by autoclaving. Contaminated instruments shall be handled with disposable gloves.

N. Used instruments that are ultrasonically cleaned shall be rinsed under running hot water prior to being placed in the used instrument container;

O. Used instruments that are not ultrasonically cleaned prior to being placed in the used instrument container shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap and sterilized by autoclaving.

P. The ultrasonic unit shall be sanitized daily with a germicidal solution.

Q. Nondisposable instruments shall be sterilized and shall be handled and stored in a manner to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall include the date of sterilization. If nontransparent bags are utilized, the bag shall also list the contents.

R. Autoclave sterilization bags with a color code indicator that changes color upon proper sterilization shall be utilized during the autoclave sterilization process.

S. Instruments shall be placed in the autoclave in a manner to allow live steam to circulate around them.

T. Contaminated disposable and single-use items shall be disposed of in accordance with [federal and] state regulations regarding disposal of biological hazardous materials.

[U. The manufacturer's written instructions of the autoclave shall be followed.]

[~~18 VAC 41-50-210~~ 18 VAC 41-50-410]. **Client qualifications, disclosures, and records.**

A. Except as permitted in § 18.2-371.3 of the Code of Virginia, a client must be a minimum of 18 years of age and shall present at the time of the tattooing [or permanent cosmetic tattooing] a valid, government issued, positive identification card including, but not limited to, a driver's license, passport, or military identification. The identification must contain a photograph of the individual and a printed date of birth.

B. The tattooer [, permanent cosmetic tattooer, or master permanent cosmetic tattooer] shall verify and document in the permanent client record the client's age, date of birth, and the type of identification provided.

C. No person may be tattooed [or permanent cosmetic tattooed] who appears to be under the influence of alcohol or drugs.

D. Tattooing [or permanent cosmetic tattooing] shall not be performed on any skin surface that manifests any evidence of unhealthy conditions such as rashes, boils, infections, or abrasions.

E. Before receiving a tattoo [or permanent cosmetic tattoo], each client and client's parent or guardian, if applicable, shall be informed verbally and in writing, using the client disclosure form prescribed by the board, about the possible risk and dangers associated with the application of each tattoo. Signatures of both the client and the tattooer shall be required on the client disclosure form to acknowledge receipt of both the verbal and written disclosures.

F. The tattoo parlor or temporary location [or permanent cosmetic tattoo salon] shall maintain proper records for each client. The information shall be permanently recorded and

made available for examination by the department or authorized agent. Records shall be maintained at the tattoo parlor [or permanent cosmetic tattoo salon] for at least two years following the date of the last entry. The temporary location client records shall be maintained by the license holder. The permanent records shall include the following:

1. The name, address, and telephone number of the client;
2. The date tattooing [or permanent cosmetic tattooing] was performed;
3. The client's age, date of birth, and a copy of the positive identification provided to the tattooer [, permanent cosmetic tattooer, or master permanent cosmetic tattooer];
4. The specific color or colors of the tattoo [or permanent cosmetic tattoo] and, when available, the manufacturer's catalogue or identification number of each color used;
5. The location on the body where the tattooing [or permanent cosmetic tattooing] was performed;
6. The name of the tattooer [, permanent cosmetic tattooer, or master permanent cosmetic tattooer];
7. A statement that the client has received a copy of applicable written care instructions, and that the client has read and understands the instructions; and
8. The signature of the client and if applicable parent or guardian.

[~~18 VAC 41-50-220~~ 18 VAC 41-50-420]. **Grounds for license [or certificate] revocation [or ,] suspension [or probation]; denial of application, renewal or reinstatement; or imposition of a monetary penalty.**

A. The board may, in considering the totality of the circumstances, fine any licensee [or certificate holder] and suspend [, place on probation] or revoke or refuse to renew or reinstate any license [or certificate], or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee [, certificate holder, or applicant] is incompetent, negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a tattooer [, limited term tattooer, tattooer apprentice, permanent cosmetic tattooer, or master permanent cosmetic tattooer];
2. The licensee [, certificate holder,] or applicant is convicted of fraud or deceit in the practice of tattooing;
3. The licensee [, certificate holder,] or applicant obtained, [attempted to obtain,] renewed or reinstated a license by false or fraudulent representation;
4. The licensee [, certificate holder,] or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which tattooers may practice or offer to practice;

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5. The licensee [, certificate holder,] or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter;

6. A licensee [or certificate holder] fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license. The board shall not be responsible for the licensee's [or certificate holder's] failure to receive notices, communications and correspondence caused by the licensees' [or certificate holder's] failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

7. The licensee [, certificate holder,] or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading;

8. The licensee [, certificate holder,] or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license [; or] certificate [; ~~or permit~~] in connection with a disciplinary action in any other jurisdiction or of any license [; or] certificate [; ~~or permit~~ ~~which~~ that] has been the subject of disciplinary action in any other jurisdiction; or

9. In accordance with § 54.1-204 of the Code of Virginia, the licensee or [~~applicant~~ certificate holder] has been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the [~~applicant's~~ regulant's] record of prior convictions, if the [~~applicant~~ regulant] is unfit or unsuited to engage in the profession of tattooing [or permanent cosmetic tattooing]. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.

B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend [, place on probation] or refuse to renew or reinstate the license of any tattoo parlor [, limited term tattoo parlor, or permanent cosmetic tattoo salon] or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the tattoo parlor [, limited term tattoo parlor, or permanent cosmetic tattoo salon] fails to comply with the facility requirements of tattoo parlors [, limited term tattoo parlors, or permanent cosmetic tattoo salons] provided for in this chapter or in any local ordinances; or

2. The owner or operator allows a person who has not obtained a license to practice as a tattooer [, limited term tattooer, permanent cosmetic tattooer, or master permanent

cosmetic tattooer] unless the person is duly enrolled as an apprentice.

[C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:

1. An instructor of the approved school fails to teach the curriculum as provided for in this chapter;

2. The owner or director of the approved school permits or allows a person to teach in the school without a current tattooing instructor certificate; or

3. The instructor, owner or director is guilty of fraud or deceit in the teaching of tattooing.]

[~~G. D.~~] In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend [, place on probation,] or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of tattooing.

NOTICE: The forms used in administering 18 VAC 41-50, Tattooing Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Salon, Shop and Parlor License Application, [~~4213SLSH (7/1/04)~~ 12SLSHP (10/06)].

Tattooer License Application, [~~1231-LIC (7/1/04)~~ 1231_50LIC (10/06)].

Tattooer Apprentice Certification Application, 1234TAC [~~(8/1/05)~~(10/06)].

[School License Application, 12SCHL (10/06).

Limited Term Tattooer License Application, 1233LIC (10/06).

Limited Term Tattoo Parlor License Application, 1235LTP (10/06).

Permanent Cosmetic Tattooer License Application, 1236_37LIC (10/06).

Permanent Cosmetic Tattooer Examination and License Application, 1236EX (10/06)

Master Permanent Cosmetic Tattooer Examination and License Application, 1237EX (10/06).]

VA.R. Doc. No. R05-327; Filed August 2, 2005, 3:23 p.m.

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-330).

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: September 20, 2006.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Summary:

The amendment clarifies that the intent of regulations for performance of office-based anesthesia is to address the administration of anesthesia in an office-based setting by stating that performance of a major conductive block for diagnostic or therapeutic purposes does not require the services of an anesthesiologist or a certified registered nurse anesthetist, but could be administered by a physician qualified by experience and training in such a procedure.

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

18 VAC 85-20-330. Qualifications of providers.

A. Doctors who utilize office-based anesthesia shall ensure that all medical personnel assisting in providing patient care are appropriately trained, qualified and supervised, are sufficient in numbers to provide adequate care, and maintain training in basic cardiopulmonary resuscitation.

B. All providers of office-based anesthesia shall hold the appropriate license and have the necessary training and skills to deliver the level of anesthesia being provided.

1. Deep sedation, general anesthesia or a major conductive block shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist. *If a major conductive block is performed for diagnostic or therapeutic purposes, it may be administered by a doctor qualified by training and scope of practice.*

2. Moderate sedation/conscious sedation may be administered by the operating doctor with the assistance of and monitoring by a licensed nurse, a physician assistant or a licensed intern or resident.

C. Additional training.

1. On or after December 18, 2003, the doctor who provides office-based anesthesia or who supervises the administration of anesthesia shall maintain current certification in advanced resuscitation techniques.

2. Any doctor who administers office-based anesthesia without the use of an anesthesiologist or certified registered nurse anesthetist shall obtain four hours of continuing education in topics related to anesthesia within the 60 hours required each biennium for licensure renewal, which are subject to random audit by the board.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-325. Fraud Reduction/Elimination Effort (amending 22 VAC 40-325-10 and 22 VAC 40-325-20).

Statutory Authority: §§ 63.2-217 and 63.2-526 of the Code of Virginia.

Effective Date: October 1, 2006.

Agency Contact: George Sheer, Fraud Program Consultant, Department of Social Services, Division of Fraud Management, 7 N. Eighth Street, Richmond, VA 23219, telephone (804) 726-7680, FAX (804) 726-7669, or e-mail george.sheer@dss.virginia.gov.

Summary:

The amendments require that expenditures incurred by dedicated fraud prevention units at local departments of social services are reimbursed according to a new methodology. The methodology is to be developed by a work group convened by the Commissioner of Department of Social Services (DSS), consisting of representatives from local departments and senior managers from DSS. The amendments also establish performance expectations for local departments of social services.

Changes made to the proposed regulation include deleting unnecessary definitions and deleting the reference to the local share of direct costs and support costs of operation reimbursement as there is no local match.

Summary of Public Comment 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.

22 VAC 40-325-10. Definitions.

For purposes of this chapter:

"Collections" means all overpayment monies collected, recovered or recouped by local departments of social services related to food stamps, TANF, and other federal benefit programs administered by the department.

"Department" means the Virginia state Department of Social Services.

"Direct costs" means the cost of salary, fringe benefits and supporting costs of operation. *Cost for supervisory and clerical staff is excluded from reimbursement.*

~~["Food stamps" means the program supervised by the Virginia Department of Social Services through which a household can receive electronic food stamps stamp benefits with which to purchase food products.]~~

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"Fraud Recovery Special Fund" means the special fund established under § ~~63.1-58.2-D~~ 63.2-526 D of the Code of Virginia.

"Fraud Reduction/Elimination Effort (Fraud FREE)" means the program established in compliance with § ~~63.1-58.2~~ 63.2-526 of the Code of Virginia to ensure that fraud prevention and investigation are aggressively pursued throughout the Commonwealth of Virginia.

"~~Fraud FREE~~ prevention, *detection* and investigation units" means a person or persons whose job it is to work on all aspects of prevention, *detection* and investigation of fraud cases.

"General fund" means that portion of the budget of the Commonwealth of Virginia ~~which~~ *that* is made up of general tax revenues, the major sources of which are sales tax, income tax, and profits from the Virginia Lottery.

"*Investigation*" means *gathering evidence on questionable applications, on-going cases and closed cases to determine intent to defraud.*

"~~Local departments~~ *department*" means *the local departments department of social services of any county or city in this Commonwealth.*

["~~Local share~~" means ~~that portion of the administrative costs of operation borne incurred by local departments of social services.~~]

"*Performance expectations*" means *qualitative and quantitative standards or measures against which responsibilities and agency/departmental objectives are assessed.*

"Private entities" means individuals or organizations other than federal, state or local personnel or agencies.

"*Public assistance*" means *Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care and general relief.*

"~~Reimbursed~~ *Reimbursement*" means the process by which the Department of Social Services provides monetary credit to local departments of social services for their *approved* administrative costs.

"State retained portion of collections" means the amount of collections less any refunds due to the federal government, consistent with federal reimbursement regulations.

"Supporting costs of operation" means program costs other than salaries and fringe benefits. These supporting costs of operation include travel, telephone, utilities, supplies, ~~and~~ allowance for space *and training and conference fees for positions funded by the FREE program.*

"TANF" means ~~the Temporary Assistance for Needy Families program.~~

["~~Temporary Assistance for Needy Families (TANF)~~" means ~~the program~~] *which provides a monthly cash benefit to families which meet income and eligibility requirements [administered by the department through which a relative can*

~~receive monthly cash assistance for the support of his eligible children.]~~

"~~Workload measures~~" means ~~those validated measures, adopted and implemented by the department, used to determine necessary appropriations for personnel and operating costs for mandated programs and services.~~

22 VAC 40-325-20. The Fraud Reduction/Elimination Effort.

A. In compliance with § ~~63.1-58.2~~ 63.2-526 of the Code of Virginia, the department of ~~Social Services~~ shall establish a statewide fraud prevention and control, *detection and investigation* program to be named the Fraud Reduction/Elimination Effort (Fraud FREE).

1. The department shall develop and implement policies and procedures for the ~~Fraud FREE~~ program.

2. The department shall provide a detailed local reimbursement procedure, on an annual basis, to assist in the formulation of the ~~locality's~~ *local department's* FREE program operation plan. The department's procedure shall project the available funding and the number of local fraud ~~workers~~ *investigators* for each ~~locality~~ *local department* that the ~~Fraud~~ FREE program will support. The number of ~~workers~~ *investigators* shall be based on an evaluation of the available funding and appropriate criteria from one or more of the following: ~~an agency's~~ *a local department's* average TANF and Food Stamp caseload size, average number of monthly applications for food stamps and TANF, number of ~~local~~ *department* workers, geographic location, number of fraud investigations, program compliance, collections and ~~workload measures~~ *performance expectations.*

3. *The department shall develop, implement and monitor local FREE units performance expectations.*

B. Each local department of ~~social services~~ shall aggressively pursue fraud prevention, *detection* and ~~investigation~~ *investigations.*

1. Each local department shall conduct fraud prevention, *detection* and investigation activities consistent with the requirements of federal regulations, the Code of Virginia, the regulations contained herein and the department's ~~Fraud~~ FREE program policy.

2. Each local department shall submit to the department, for annual approval, a program operation plan, *formatted by the department*, which shall include a description of the ~~program staffing~~ *local department's prevention, detection and investigative process, agreement with the Commonwealth's attorney, identification of staff charged with oversight or supervisory responsibility of the FREE program, performance expectation monitoring process, signed commitment to adhere to specified responsibilities identified in the Statement of Assurance section of the program operation plan, and, if requested, a proposed annual budget to include the identification of the FREE program investigators, their salary, fringe benefit amounts, supporting operating costs, hours worked per week and time dedicated to the FREE program.*

3. Upon request, each local department shall provide the department with an accounting of FREE program expenditures.

C. Each local department shall establish a separate fraud unit to the extent that funding is available. Funding for the FREE program shall be comprised of balances in the Fraud Recovery Special Fund, general funds appropriated for this activity, and any federal funds available for this purpose.

1. In order to receive full reimbursement of [the local share of] direct costs and supporting costs of operation, a local agency department must:

a. Comply with all pertinent law, regulation and policy; and

b. Collect overpayments, not refunds due to the federal government, which equal or exceed the local share of direct costs of its approved positions dedicated to Fraud FREE. In accordance with the law, each local department shall establish and maintain a FREE prevention, detection and investigation unit; and

c. Recover fraud and nonfraud related overpayments of designated federal assistance programs. Reimbursement to localities shall be made in accordance with the methodology for the allocation of funds to localities as developed by the work group convened by the commissioner, consisting of local department representatives and senior department managers. Each local department's level of reimbursement of direct and support operation costs is paid from available federal funds, general funds and state retained portion of collections.

2. Local departments may contract with other local departments to share a fraud prevention, detection and investigation unit and may contract with private entities to perform fraud investigation investigations. Any private entity performing fraud investigation investigations shall comply with the requirements of § 2.1-155.3 30-138 of the Code of Virginia and the restrictions of § 63.1-58.2 63.2-526 of the Code of Virginia.

VA.R. Doc. No. R04-14; Filed July 27, 2006, 2:12 p.m.

Title of Regulation: 22 VAC 40-901. Community Services Block Grant Program (amending 22 VAC 40-901-10; adding 22 VAC 40-901-40 through 22 VAC 40-901-90).

Statutory Authority: §§ 2.2-5402 and 63.2-217 of the Code of Virginia and 42 USC § 9909.

Effective Date: October 1, 2006.

Agency Contact: J. Mark Grigsby, Director, Office of Community Services, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7922, FAX (804) 726-7946, or e-mail james.grigsby@dss.virginia.gov.

Summary:

The amendments establish the process for providing community action agency services to low-income individuals and families in areas of the Commonwealth that do not currently receive those services.

The amendments lay out the preferences stated in federal law for expansion of the community action agencies into unserved areas of the Commonwealth. The amendments address the process for expanding the services area of an existing community action agency and designation of a new community action agency. In addition, amendments address funding for new community action agencies and those who have expanded their service area.

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.

22 VAC 40-901-10. Definitions.

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

"Community action agency" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private, nonprofit agency that has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the Commonwealth, and that is designated as a community action agency by federal law, federal regulations or the Governor.

"Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.

"Community organization" means a private nonprofit organization, including faith-based organizations.

"Department" means the Department of Social Services.

"Local share" means cash or in-kind goods and services donated to community action agencies or community action statewide organizations to carry out their responsibilities.

"Locality" means a county or city in the Commonwealth.

22 VAC 40-901-40. Preferences for provision of services in unserved localities.

The federal Community Services Block Grant Act (42 USC § 9909) and the state Community Action Act (§ 2.2-5400 et seq., of the Code of Virginia) provide for localities not currently being served by community action agencies to be served through the expansion of existing community action agencies or the designation of a new community action agency. The following is the preference for providing services to an unserved locality:

1. Expansion of the service area of an existing community action agency.

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2. Designation of a community organization as a community action agency.

3. Designation of a local government or a combination of local governments as a community action agency.

22 VAC 40-901-50. Expansion of community action agency service area.

A locality may reach an agreement with an existing community action agency for the provision of services. The locality and the community action agency may submit a proposal to the department that includes plans for the expansion of services into the locality and a provision describing how the locality will be represented on the board of the community action agency. Upon department approval of the proposal, the governing body of the locality may adopt a resolution designating the community action agency as their community action agency and forward this resolution to the Department of Social Services. In adopting the resolution, the governing body must have allowed the opportunity for public comment. Upon receipt of the resolution, the locality will be included in the community action agency's service area.

22 VAC 40-901-60. Designation of a community organization as a community action agency.

A. To be designated as a community action agency, a community organization's purpose shall include working for the reduction of poverty and the revitalization of low-income communities through the identification of local needs and the provision of a broad range of services to meet those needs. The organization must have the recommendation of the governing body of the localities to be served, must be financially viable, and must meet administrative standards, financial management standards, and other requirements established by federal and state laws and regulations. In order for the department to support the designation of a community organization to become a community action agency, the following conditions should exist:

1. The organization's governing board must meet, or be in the process of changing to meet, the requirements of federal and state law related to community action agency boards.

2. Each locality in the proposed service area must have approved a resolution recommending the designation of the organization as a community action agency. In adopting the resolution, the governing body must have allowed the opportunity for public comment.

3. The organization and its management should have a history of successfully providing a variety of services to low-income individuals. Examples would include operating four or more programs aimed at various segments of the low-income population. This can include community and economic development. Services currently being provided by the community organization should not be limited to a single segment of the population.

4. The low-income population in the proposed designated service area should be large enough to justify funding a variety of programs.

5. The organization should be financially stable. This would include funding from a variety of federal and/or state sources as well as private and/or local government funding. The organization should have a sufficient reserve of unrestricted funds to avoid cash flow problems; for example, a reserve equal to or exceeding three months' operating expenses.

6. The organization must have financial procedures in place to meet Generally Accepted Accounting Principles (GAAP). This would normally be supported by a review of prior independent audits.

7. The organization must have developed a plan for providing Community Services Block Grant funded services within the proposed service area. This plan must have been developed with input from a variety of sources including the low-income population of the proposed service area.

B. A community organization wishing to be designated as a community action agency must submit a written request to the department. The request must include documentation verifying that all of the criteria listed in this section are met. Any community organization wishing to become a community action agency is strongly encouraged to contact the department and request technical assistance in this process.

22 VAC 40-901-70. Designation of a locality or group of localities as a community action agency.

If no existing community action agency or other community organization is willing and able to provide services, a locality or group of localities can request that the department designate one or more localities as a community action agency. Any locality or group of localities wishing to become a community action agency are strongly encouraged to contact the department and request technical assistance in this process. This request must include the following documentation:

1. A description of the efforts made to obtain services through an existing community action agency or a community organization that could have been designated as a community action agency.

2. A resolution adopted by the locality or each of a group of localities requesting that it be designated as a community action agency. In adopting the resolution, the governing body or bodies must have allowed the opportunity for public comment.

3. A resolution adopted by the locality or each of a group of localities establishing a community action board that meets the requirements of federal and state law related to public community action agencies.

4. A plan for providing CSBG-funded services within the proposed service area. This plan must have been developed with input from a variety of sources including the low-income population of the proposed service area.

22 VAC 40-901-80. Evaluation of requests for designation as a new community action agency.

The department is responsible for evaluating and making recommendations to the Governor on any request for the designation of a new community action agency. This evaluation can include onsite monitoring and requests for additional information and documentation. Upon completion of this evaluation, the department will forward to the Secretary of Health and Human Resources a recommendation on what action the Governor should take regarding designation of the community organization or locality as a community action agency. If the Governor designates the community organization or locality as a community action agency, the department will issue a Community Services Block Grant contract with the organization or localities that will be effective the July 1 following the designation.

22 VAC 40-901-90. Funding for expanded or new community action agencies.

A. As a basis for determining funding for new or expanded community action agencies, the department will use the total number of low-income persons, localities, and square miles that are included in the service area of Virginia's network of existing, expanded, and new community action agencies. The number of low-income persons will be based on the most recent census data. An allocation of funds for new or expanded community action agencies will be developed based on the following formula:

- 1. 75% based on the number of low-income persons living in the service area compared to the total number of low-income persons in the network;*
- 2. 20% based on the number of localities in the service area compared to the total number of localities in the network; and*
- 3. 5.0% percent based on the number of square miles contained in the service area compared to the total square miles in the network.*

B. When an existing community action agency has expanded its service area, the agency's new allocation will be the greater of their current allocation or their allocation based on the formula in subsection A of this section.

C. When a new community action agency is designated, the allocation will be based on the formula in subsection A of this section.

VA.R. Doc. No. R04-250; Filed July 27, 2006, 2:13 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 11. GAMING

STATE LOTTERY BOARD

Title of Regulation: 11 VAC 5-20. Administration Regulations (amending 11 VAC 5-20-200; repealing 11 VAC 5-20-210 through 11 VAC 5-20-520).

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 20, 2006.

(See Calendar of Events section for additional information)

Effective Date: November 6, 2006.

Agency Contact: Betty K. Hill, Legislative and Regulatory Coordinator, State Lottery Department, 900 East Main Street, Richmond, VA 23219, telephone (804) 692-7904, FAX (804) 692-7603, or e-mail bhill@valottery.com.

Basis: Section 58.1-4007 A of the Code of Virginia authorizes the State Lottery Board to promulgate regulations "relative to departmental procurement which include standards of ethics for procurement consistent with the provisions of Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 and which ensure that department procurement will be based on competitive principles."

Purpose: The purpose of this proposed regulatory change is to amend the Lottery's regulations pertaining to the procurement process. With the goal of creating more expeditious and adaptable procedures, the current procurement regulations will be removed from the administrative code and replaced with language that references a Virginia Lottery Purchasing Manual. This change will allow the Lottery Board to amend the Purchasing Manual to meet changing business needs. For example, our current procurement regulations have not been changed since 1988 and are inconsistent with limits established by the Department of General Services, Division of Purchases and Supply.

Substance: The most substantive changes in the proposed regulations are the purchasing dollar thresholds. The current dollar levels requiring competition are \$2,000 for goods and \$5,000 for services with formal sealed bidding and competitive negotiations required at \$15,000 and above. Proposed thresholds mirror the limits used by state government and will require competition for goods and services starting at \$5,001 with formal sealing bidding and competitive negotiations required at \$50,000 and above.

Issues: The advantages of the proposed regulatory change ensures that the Virginia Lottery has a fundamental obligation to the general public to ensure that its procurements are conducted in a fair and impartial manner without any impropriety or appearance of impropriety. Virginia Lottery procurement policies and procedures ensure that all qualified

vendors have access to business opportunities and that no vendor is arbitrarily or capriciously excluded. Competitive procurement does not guarantee that a preferred brand or vendor will be selected. When conducted properly, competitive procurement responds to user needs, enhances citizen confidence in the integrity of government operations and obtains favorable prices. The amendments impose no known disadvantages to the agency or the public.

Rationale for Using Fast-Track Process: The fast track process is being used because the department fully expects the regulations to be noncontroversial. That expectation is based on the following:

1. The proposed regulations and purchasing manual will establish requirements that more closely track the delegated purchasing dollar thresholds and general purchasing practices used by state government;
2. The change approved by the General Assembly to clarify the Lottery's exemption from the Virginia Public Procurement Act (HB 1027, 2004) was passed overwhelmingly in the 2004 session.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The State Lottery Board (board) proposes to remove rules pertaining to the procurement process from the Administrative Code (11 VAC 5-20) and include the language in the Virginia Lottery Purchasing Manual. The current dollar thresholds requiring competitive procedures will be raised from \$2,000 to \$5,000 for good purchases.

Results of analysis. The benefits likely exceed the costs for all proposed changes.

Estimated economic impact. Currently rules pertaining to the procurement process are addressed in the Administrative Code (11 VAC 5-20). The board proposes to remove these rules from the Administrative Code and include them in the Virginia Lottery Purchasing Manual.¹ Also, the board proposes to raise the caps on small good purchases from \$2,000 to \$5,000 in order to be consistent with the rest of state government.² Purchase of goods of \$5,000 or less will be exempted from competitive procurement procedures.

The changeover from a regulation to a purchasing manual will create a more efficient and expeditious purchasing system and allow the State Lottery Department (SLD) to amend the Purchasing Manual to meet changing business needs. The increase of small purchases thresholds from \$2,000 to \$5,000 will create cost savings for SLD. According to SLD,

¹ This is what the Department of General Services (DGS) has been doing with its purchasing manual.

² For example, according to the Vendor's Manual established by DGS, small good purchases up to \$5,000 can be made by single quotation.
Source: <http://dps.dgs.virginia.gov/dps/Manuals/manuals-bottom.htm>

approximately 16 hours of staff time are needed for a typical purchase totaling between \$2,001 and \$5,000, for providing information, processing proposals or bids, and conducting future inspections. Given the average hourly wage being \$26.41, raising the cap for competitive procedures from \$2,000 to \$5,000 will create a cost saving of \$423 per order. SLD estimates that half of the 220 purchases made in fiscal year 2005 fell within this range. Supposing that the number of purchases between \$2,000 and \$5,000 remains 110, the proposed regulatory change will create an estimated saving of 1,760 working hours, which equates to \$46,481 given the average hourly wage being \$26.41.

The State Lottery Department believes that raising the competitive bidding cap will result in little to no increase in purchasing prices. Any price increases, if there are any, will likely be outweighed by savings from reduced staff hours. The proposed regulatory changes will impose no costs to the vendor community.

Businesses and entities. The proposed regulation will cause reduced working hours and thus cost savings for SLD.

Localities particularly affected. The proposed regulation will not particularly affect any localities in the Commonwealth.

Projected impact on employment. SLD will incur a reduction of 16 working hours on average for each purchase between \$2,001 and \$5,000. Supposing that 110 purchases will be made annually that fall within this range, the estimated total reduction in working hours will be 1,760 hours annually.

Effects on the use and value of private property. The proposed regulation will likely not have any impact on the use and value of private property.

Small businesses: costs and other effects. The proposed regulation will likely not have any impact on small businesses.

Small businesses: alternative method that minimizes adverse impact. The proposed regulatory changes will not have any negative impact on small businesses.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected

small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Lottery concurs with the economic impact analysis statement.

Summary:

The amendments replace the current regulations pertaining to the procurement process with procedures contained in the Virginia Lottery Purchasing Manual.

11 VAC 5-20-200. Procurement in general.

~~A. To promote the free enterprise system in Virginia, The State Lottery Department will purchase goods or services by using competitive methods whenever possible. In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise in accordance with procedures contained in The Virginia Lottery Purchasing Manual.~~

~~B. The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, when in the best interest of the State Lottery Department.~~

~~C. When time permits, the department may publish notice of procurement actions in "Virginia Business Opportunities," published by the Department of General Services, Division of Purchases and Supply.~~

11 VAC 5-20-210. Exemption and restrictions. (Repealed.)

~~A. Purchase of goods of \$2,000 or less shall be exempted from competitive procurement procedures. Purchase of services of \$5,000 or less shall be exempted from competitive procurement procedures. Specific purchases of goods of more than \$2,000 and services of more than \$5,000 may be exempted from the competitive procurement procedures when the director determines in writing that the best interests of the department will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.~~

~~B. All purchases shall be made in compliance with the standards of ethics in 11 VAC 5-20-420 of this chapter.~~

~~C. The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.~~

~~D. It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the State Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.~~

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~~E. Whenever a purchase is exempt from competitive procurement procedures under this chapter, except purchases of \$2,000 or less, the contracting officer is obliged to make a written determination that the cost of the goods or services is reasonable under the circumstances. In making this reasonableness determination, the contracting officer may use historical pricing data, and personal knowledge of product and marketplace conditions.~~

~~11 VAC 5-20-220. Requests for Information. (Repealed.)~~

~~A. A Request for Information (RFI) may be used by the department to determine available sources for goods or services.~~

~~B. The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.~~

~~C. The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers or other publications.~~

~~1. Additional RFI's may be published for a good or a service, as determined on a case-by-case basis.~~

~~2. To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.~~

~~D. All costs of developing and presenting the information furnished will be paid for by the vendor.~~

~~E. The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by § 11-52-D of the Code of Virginia. The department shall have no further obligation to any vendor who furnishes information.~~

~~F. The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract.~~

~~11 VAC 5-20-230. Requests for Proposals. (Repealed.)~~

~~A. A written Request for Proposals (RFP) may be used by the department to describe in general terms the goods or services to be purchased. An RFP may result in a negotiated contract.~~

~~B. The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.~~

~~C. The department shall publish or post a public notice of the RFP.~~

~~1. All solicitations shall be posted for not less than five working days on a bulletin board at the State Lottery Department. The notice may also be: mailed to vendors who responded to a Request for Information; published in general circulation newspapers in areas where the contract will be performed; if time permits and at the option of the department, reported to the "Virginia Business Opportunities" at the Department of General Services, Division of Purchases and Supply; and given to any other interested vendor.~~

~~2. The department shall decide the method of giving public notice on a case-by-case basis. The decision will consider the means which will best serve the department's procurement needs and competition in the private sector.~~

~~D. Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.~~

~~E. The department will evaluate each vendor proposal.~~

~~1. The evaluation will consider the vendor's response to the factors in the RFP.~~

~~2. The evaluation will consider whether the vendor is qualified, responsive and responsible for the contract.~~

~~F. The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.~~

~~G. Award of RFP contract.~~

~~1. The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.~~

~~2. Price will be considered but is not necessarily the determining factor.~~

~~3. The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon.~~

~~11 VAC 5-20-240. Invitations for Bids. (Repealed.)~~

~~A. A written Invitation for Bids (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.~~

~~B. The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.~~

~~1. The IFB may contain inspection, testing, quality, and other terms essential to the contract.~~

~~2. It may contain other optional data.~~

~~C. Public notice of the IFB shall be given.~~

~~1. The IFB may be mailed to potential bidders and to the Department of Minority Business Enterprise. In addition, it may be published in summary form stating where a full copy may be obtained in general circulation newspapers in areas where the contract will be performed. The IFB shall be posted for not less than five working days at the department's headquarters in a public area used to post purchase notices, and shall be given to any other interested vendor.~~

~~2. The publication of the IFB notice will consider the means which will best serve the department's procurement needs and competition in the private sector.~~

~~D. Bids shall be received until the date and time set forth in the IFB. Late bids shall not be considered.~~

E. The IFB may provide that bids shall be publicly opened. If bids are publicly opened, the following items shall be read aloud:

1. Name of bidder;
2. Unit or lot price, as applicable; and
3. Terms: discount terms offered, if applicable, and brand name and model number, if requested by attendees.

F. The department shall evaluate each vendor bid.

1. The evaluation shall consider whether the bid responds to the factors in the IFB.

2. All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.

3. The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.

G. The department shall award the contract to the lowest responsive and responsible bidder.

11 VAC 5-20-250. Sole source procurements. (Repealed.)

A. A sole source procurement shall be made when there is only one source practicably available for goods or services. Because there is only one source practicably available, a sole source contract may be made without the use of an RFI, RFP, IFB or other competitive procurement process.

B. For a sole source procurement of goods of more than \$2,000 and services of \$5,000 but not more than \$15,000, the department will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods or services procured, the date of the procurement and factors leading to the determination of sole source.

C. For a sole source procurement greater than \$15,000, on the day the director awards the procurement, he will post for not less than five working days a written statement in a public area used to post purchase notices at the department's headquarters. The director will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods and services procured for, the factors leading to the determination of sole source, and the date of the procurement.

11 VAC 5-20-260. Emergency purchase procurement. (Repealed.)

A. An emergency purchase procurement shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action. An emergency purchase may be used only to purchase goods or services necessary to meet the emergency; subsequent purchases must be obtained through normal purchasing procedures. Competitive procedures are not required to make an emergency purchase procurement.

B. For an emergency purchase of goods of more than \$2,000 and services of \$5,000 but not more than \$15,000, the department will state in writing the nature of the emergency, the vendor selected, the goods or services procured, the date

of the procurement and factors leading to a determination of the emergency purchase.

C. For an emergency purchase greater than \$15,000, on the day the director awards the procurement, a written statement shall be posted for not less than five working days in a public area used to post purchase notices at the department's headquarters. The director will state in writing for the file the nature of the emergency, the vendor selected, the goods and services procured, the date of the procurement and factors leading to a determination of the emergency purchase.

11 VAC 5-20-270. Procedures for small purchases. (Repealed.)

A. Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed \$15,000.

B. Price quotations may be obtained through oral quotations in person or by telephone without the use of an RFI, RFP or IFB.

C. If the contract is \$2,000 or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over \$2,000.

D. Except in the case of an emergency under 11 VAC 5-20-260 or for purchases of goods of \$2,000 or less or services of \$5,000 or less, the department will attempt to obtain at least three quotations.

E. In letting small purchase contracts, the department may consider factors in addition to price.

11 VAC 5-20-280. Procurement of nonprofessional services. (Repealed.)

A. Generally, the procurement of nonprofessional services shall be in accordance with competitive procurement principles, unless otherwise exempted.

B. Nonprofessional services may be procured through noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of nonprofessional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2. When a written determination is made and approved by the director that there is only one adequately qualified expert or source practicably available for the services to be procured.

11 VAC 5-20-290. Procurement of professional services. (Repealed.)

A. Generally, the procurement of professional services shall be in accordance with competitive principles but is always exempt from competitive bidding requirements. Selection of professional services should be made on the basis of qualifications, resources, experience and the cost involved.

B. Professional services may be procured through noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific

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type of professional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

~~2. When a written determination is made and approved by the director that there is only one adequately qualified professional, expert or source practicably available for the services to be procured. Such services may include those of uniquely qualified lottery industry professionals, experts or sources.~~

~~C. Professional services procurement by competitive negotiation shall be in accordance with 11 VAC 5-20-300.~~

11 VAC 5-20-300. Guidelines for competitive procurement of professional services. (Repealed.)

~~A. In competitive negotiations for professional services, the department shall engage in one or more individual discussions with each of two or more offerors deemed fully qualified, responsible and suitable, with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include nonbinding estimates of total project costs and methods to be utilized in arriving at a price for the services.~~

~~B. At the request of an offeror, properly marked, proprietary information shall not be disclosed to the public or to competitors.~~

~~C. At the conclusion of the discussions, on the basis of predetermined evaluation factors and information developed in the selection process, the department shall select, in order of preference, two or more offerors whose professional qualifications and proposed services are deemed to meet best the department's procurement needs.~~

~~D. Negotiations are then conducted with the first ranked offeror. If a satisfactory and advantageous contract can be negotiated at a fair and reasonable price, the award is made to that offeror. Otherwise, the negotiations with the first ranked offeror are terminated formally and are conducted with the offeror ranked second and so on until such a contract can be negotiated at a fair and reasonable price.~~

~~E. If the department determines in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the other offerors under consideration, a purchase may be negotiated and awarded to that offeror.~~

~~F. The department must ensure that all points negotiated are properly documented and become a part of the procurement file.~~

~~G. The department shall establish a limit for each procurement on the number of times a contract or open purchase term may be extended.~~

~~H. A contract for professional services may be made subject to the notification and public posting requirement of the formal bid procedures.~~

11 VAC 5-20-310. Time to submit and accept Requests for Information (RFI), Requests for Proposals (RFP), or Invitations for Bids (IFB). (Repealed.)

~~A. All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.~~

~~1. All vendors shall take responsibility for their chosen method of delivery to the department.~~

~~2. The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.~~

~~3. Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.~~

~~4. All vendors who received solicitations will be notified of any changes in the process times and dates or if a solicitation is cancelled.~~

~~B. Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days after the submission due date and will remain in effect thereafter unless the bidder retracts his bid in writing at the end of that period. The vendor must agree to accept a contract if offered within the 45-day time period. The department may require a longer or shorter period for specific goods or services.~~

11 VAC 5-20-320. Questions on bids. (Repealed.)

~~Questions on contents of other bidders' bids or offerors' proposals will not be answered until after decisions are made.~~

11 VAC 5-20-330. How to modify or withdraw proposals or bids. (Repealed.)

~~A. A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.~~

~~B. A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.~~

~~1. A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.~~

~~2. A proposal or bid may be withdrawn after opening if the department receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.~~

~~C. A vendor may not modify a proposal or bid after the purchase award is made.~~

11 VAC 5-20-340. Rejection of bids. (Repealed.)

~~The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. Vendors so identified shall be notified in writing by the department. New bids may be requested at a time which meets the needs of the department.~~

11 VAC 5-20-350. Testing of product. (Repealed.)

~~Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing.~~

11 VAC 5-20-360. Proposal bid or performance security. (Repealed.)

~~A. The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.~~

~~1. When required, security must be in the form of a certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.~~

~~2. When required, security will not be waived, except upon action by the director.~~

~~B. Security provided by vendors to whom a contract is awarded will be kept by the department until all provisions of the contract have been completed.~~

11 VAC 5-20-370. Assignment of contracts. (Repealed.)

~~A vendor may not assign any contract to another party without permission of the director.~~

11 VAC 5-20-380. Strikes, lockouts or acts of God. (Repealed.)

~~Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor.~~

11 VAC 5-20-390. Remedies for the department on goods and services which do not meet the contract. (Repealed.)

~~A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.~~

~~B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between the contract price and market price will be paid by the vendor who failed to follow the contract. This remedy shall be in addition to any other remedy provided by law.~~

11 VAC 5-20-400. Administration of contracts. (Repealed.)

~~A. The department will follow procedures in administering its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.~~

~~B. The department shall keep all records relating to a contract for three years after the end of a contract.~~

~~1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.~~

~~2. Records shall be open to the public except for proprietary information for which protection has been properly requested.~~

~~C. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.~~

~~1. The department shall send the changes in writing to the vendor. Vendors who deviate from the contract without receiving the written changes from the department do so at their own risk.~~

~~2. Modifications shall require the signature of the director or the signature of the designee granted authority to sign for the amount amended, except a contract may be modified for payment purposes by an amount not to exceed 10% of the total contract without a written change order or amendment. In no event shall a contract be modified for an amount of \$10,000 or 25%, whichever is greater, individually or cumulatively without approval and signature of the director. Modifications shall be effected by issuance of a letter in the form of a change order or amendment to the original agreement issued by the State Lottery Department and accepted by signature of the contractor. Such letter shall become part of the official contract.~~

~~D. The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations as provided in 11 VAC 5-20-390 A and B.~~

~~E. The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.~~

~~F. The department shall be responsible for inspecting, accepting or rejecting goods or services under contract.~~

~~1. In rejecting goods or services, the department will notify the vendor as soon as possible.~~

~~2. The department will state the reasons for rejecting the goods or services and request prompt replacement.~~

~~3. Replacement goods or services shall be made available at a date acceptable to the department.~~

~~G. The department will report complaints in writing to the vendor as they occur. The reports will be part of the department's purchase records.~~

~~H. To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Article 2.1 (§ 11-62.1 et seq.) of Chapter 7 of Title 11 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.~~

~~I. Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.~~

~~J. A purchase order or contract may be terminated for the convenience of the department by delivering to the vendor a notice of termination specifying the extent to which~~

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~~performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.~~

~~1. If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the department's use, no claims will be accepted by the department. Payment will be made for items shipped prior to receipt of the termination notice.~~

~~2. If the purchase order or contract is for items being produced exclusively for the use of the department, and raw materials or services must be secured by the vendor from other sources, the vendor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The department may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the vendor to sell the same, subject to the department's approval as to price. The vendor may, with the approval of the department retain the same, and apply a credit to the claim. The vendor must complete performance on any part of the purchase order or contract which was not terminated.~~

~~3. Within 120 days after receipt of the notice of termination, or such longer period as the department for good cause may allow, the vendor must submit any termination claims. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency or the appropriate assistant attorney general, or both, for disposition in accordance with § 2.1-127 of the Code of Virginia.~~

11 VAC 5-20-410. Vendor background. (Repealed.)

~~A. A vendor shall allow the department to check his background. The background check may extend to any on-line or instant ticket vendor employee working directly on a contract with the department, any parent or subsidiary corporation of the vendor and shareholders of 5.0% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.~~

~~B. Before contracting with the department, the department may require a vendor to sign an agreement with the department to allow a criminal investigation of the entities and persons named in subsection A of this section.~~

~~C. The vendor shall allow the department to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business during normal business hours.~~

11 VAC 5-20-420. Ethics in contracting. (Repealed.)

~~A. The department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, and will be subject to the provisions of the State and~~

~~Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia).~~

~~B. Any contract which violates the contracting ethics in the Code of Virginia may be voided and rescinded immediately by the department.~~

11 VAC 5-20-430. Preference for Virginia products and firms. (Repealed.)

~~A. In the case of a tie bid or proposal, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.~~

~~B. Whenever any bidder or offeror is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder or offeror who is a resident of Virginia.~~

11 VAC 5-20-440. Generally. (Repealed.)

~~The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures. In lieu thereof, this chapter applies to all vendors. In the event of a protest on a procurement action, the vendor shall follow the remedies available in this chapter. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will conduct a hearing on each appeal or he shall designate a hearing officer to preside over the hearing.~~

11 VAC 5-20-450. Appeals, protests, time frames and remedies related to solicitation and award of contracts. (Repealed.)

~~A. If a vendor is considered ineligible or disqualified, the vendor may appeal the department's decision.~~

~~1. The written appeal shall be filed within 10 days after the vendor receives the department's decision.~~

~~2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.~~

~~B. If a vendor is not allowed to withdraw a bid in certain circumstances, the vendor may appeal the department's decision.~~

~~1. The written appeal shall be filed within 10 days after the vendor receives the department's decision.~~

~~2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.~~

~~a. The certified check shall be payable to the State Lottery Department.~~

~~b. The cash bond shall name the State Lottery Department as obligor.~~

~~c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and~~

agrees to accept the bid or if the department's decision is reversed.

d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.

3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.

C. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular contract.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a responsible vendor for the particular contract under appeal.

3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D of this section.

4. Nothing contained in this subsection shall be construed to require the department to furnish a statement of the reasons why a particular proposal was not deemed acceptable.

D. Any vendor or potential vendor may protest the award or the department's decision to award a contract.

1. The written protest shall be filed within 10 days after the award on the announcement of the decision to award is posted or published, whichever occurs first.

2. If the protest depends upon information contained in public records pertaining to the purchase, then a 10-day time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect the records is made within 10 days after the award or the announcement of the decision to award is posted or published, whichever occurs first.

3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.

5. No protest shall delay the award of a contract.

6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.

11 VAC 5-20-460. Appeals, time frames and remedies related to contract disputes and claims. (Repealed.)

A. In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.

B. Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.

1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.

2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.

3. Nothing in this chapter shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.

4. Pending claims shall not delay payment from the department to the vendor for undisputed amounts.

5. The director's decision will state the reasons for the action.

C. Relief from administrative procedures, liquidated damages, or informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.

11 VAC 5-20-470. Form and content of appeal to the director. (Repealed.)

A. The vendor shall make the appeal to the director in writing. The appeal shall be mailed or hand delivered to the State Lottery Director at the headquarters of the State Lottery Department.

B. The appeal shall state the:

1. Decision of the department which is being appealed;

2. Basis for the appeal;

3. Contract number;

4. Other information which identifies the contract; and

5. Reasons for the action.

C. The director's decision on an appeal will be sent to the vendor by certified mail, return receipt requested.

1. The director shall follow the time limits in this chapter and shall not make exceptions to the filing periods for the vendor's appeal and rendering the director's decision.

2. The director's decision will state the reasons for the action.

11 VAC 5-20-480. State Lottery Department appeal hearing procedures. (Repealed.)

A. The director or the appointed hearing officer will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery

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Department are not trials and shall not be conducted like a trial.

~~1. The Administrative Process Act does not apply to the hearings.~~

~~2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.~~

~~3. Legal counsel may represent the vendor or the department. Counsel is not required.~~

~~4. The director may exclude evidence which he determines is repetitive or not relevant to the dispute under consideration.~~

~~5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.~~

~~6. Witnesses may be asked to testify. The director does not have subpoena power. No oath will be given.~~

~~7. The director may ask questions at any time. The director may not question the vendor in closed session.~~

~~B. Hearings shall be open to the public.~~

~~1. The director may adjourn the public hearing to discuss and reach his decision in private.~~

~~2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.~~

~~3. A court reporter may be used. The court reporter shall be paid by the person who requested him.~~

~~a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.~~

~~b. The transcript shall become part of the department's records.~~

~~C. Unless the director determines otherwise, hearings will be in the following order:~~

~~1. The vendor will explain his reasons for appealing and the desired relief.~~

~~2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.~~

~~3. The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.~~

~~4. After all evidence has been presented, the director shall reach his decision in private.~~

11 VAC 5-20-490. Notice, time and place of hearings. (Repealed.)

~~A. All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.~~

~~1. Appeals may be heard sooner if everyone agrees.~~

~~2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.~~

~~B. All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.~~

11 VAC 5-20-500. Who may take part in the appeal hearing. (Repealed.)

~~A. The director may request specific people to take part in the hearing.~~

~~B. The protesting vendor and the department shall participate in hearings on ineligibility, disqualification, responsibility, or denial of a request to withdraw a bid.~~

~~C. The protesting vendor and the department shall participate in hearings on claims or disputes.~~

11 VAC 5-20-510. Director's decision. (Repealed.)

~~A. The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.~~

~~B. For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director if a transcript is prepared. There is no requirement that a transcript be made, even if services of a court reporter are used for the hearing.~~

~~C. Format of decision shall include:~~

~~1. The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."~~

~~2. The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.~~

~~3. The decision will be signed by the director.~~

~~D. Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.~~

11 VAC 5-20-520. Appeal to courts. (Repealed.)

~~A. The department is not subject to the Virginia Public Procurement Act. Thus, a vendor has no automatic right of appeal of a decision to award, an award, a contract dispute, or a claim with the department.~~

~~B. Nothing in this chapter shall prevent the director from taking legal action against a vendor.~~

DOCUMENTS INCORPORATED BY REFERENCE

The Virginia Lottery Purchasing Manual, Release 1, October 2005, Virginia Lottery Department.

VA.R. Doc. No. R06-311; Filed August 2, 2006, 11:59 a.m.

VIRGINIA RACING COMMISSION

REGISTRAR'S NOTICE: The following amendments were previously published in final form specifically for and limited to the thoroughbred meet held at Colonial Downs commencing on June 17, 2005, and ending on August 9, 2005. After expiring on August 9, 2005, at the end of the thoroughbred meet, the amendments were again made final specifically for and limited to the harness meet beginning on September 16, 2005, and ending on November 14, 2005. After expiring on November 14, 2005, at the end of the harness meet, the amendments were again made final specifically for and limited to the thoroughbred meet beginning on June 16, 2006, and ending on August 12, 2006. The final amendments were exempt from the Virginia Administrative Process Act pursuant to subdivision A 18 of § 2.2-4002 of the Code of Virginia, which exempts the Virginia Racing Commission when acting by and through its duly appointed stewards or in matters related to any specific race meeting.

The Virginia Racing Commission is now adopting the amendments using the fast-track rulemaking process to make the amendments permanent for all future racing meets conducted in the Commonwealth of Virginia.

Titles of Regulations: 11 VAC 10-70. Stewards (amending 11 VAC 10-70-20, 11 VAC 10-70-30, 11 VAC 10-70-40, 11 VAC 10-70-60 through 11 VAC 10-70-90 and 11 VAC 10-70-170; repealing 11 VAC 10-70-50).

11 VAC 10-90. Appeals to the Commission (amending 11 VAC 10-90-10, 11 VAC 10-90-30, and 11 VAC 10-90-50).

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

Effective Date: November 4, 2006.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail david.lermond@vrc.virginia.gov.

Basis: The Virginia Racing Commission derives its statutory authority to promulgate regulations from the provisions of § 59.1-369 of the Code of Virginia. Subdivision 3 of § 59.1-369 states, "The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter."

Purpose: These amendments are being made in order to conform with the changes that were made to the Code of Virginia as July 1, 2005, as provided for in SB 1270 (Virginia Racing Commission). The amendments are intended to clarify the authority of the stewards appointed by the Virginia Racing Commission to enforce and interpret its regulations, which are designed to protect the health and welfare of the citizens of the Commonwealth of Virginia.

Rationale for Using Fast-Track Process: These amendments were made final on June 17, 2005 specifically for, and limited to the thoroughbred meeting held at Colonial Downs commencing on June 17, 2005 and ending on August 9, 2005. After expiring on August 9, 2005, at the end of the

thoroughbred meet, the amendments were again made final by the Virginia Racing Commission specifically for and limited to the harness meet, which began on September 16, 2005, and continued until November 14, 2005. These final amendments made by the Virginia Racing Commission were exempt from the Virginia Administrative Process Act pursuant to 2.2-4002 A 18. The Virginia Racing Commission now wishes to make the amendments to these chapters permanent for all future racing meets conducted in the Commonwealth of Virginia. The commission wishes to use the fast-track process in order to ensure that the amendments will be permanent by the start of the thoroughbred meeting, that will begin sometime in June 2006. The commission believes that these amendments are noncontroversial in nature and does not expect to receive objections from anyone.

Substance: The word "participant" has been added, which provides that certain individuals associated with a horse that is entered to run in Virginia shall be considered as participants and come under the jurisdiction of the commission. Additionally, the amendments provide the authority of the commission to take disciplinary actions through stewards or at a meeting at which a quorum is present.

Issues: The primary advantage to the public is that the amendments provide additional rights of due process to a participant in a case that is appealed to the commission. Because of the changes made to the Code of Virginia, the commission now must find by a preponderance of the evidence that a violation has occurred whereas before it only had to have reason to believe that a violation had taken place in order to take disciplinary action against a participant. There will not be any disadvantages to the public by implementing the amended provisions.

The primary advantage of these amendments to the agency is the use of the word "participant" as defined in § 59.1-365 of the Code of Virginia. The amended regulations will now apply not only to permit holders, but participants as well. Once a horse is entered to run in Virginia, all owners, trainers, jockeys, and drivers associated with that horse are considered participants and come under the jurisdiction of the commission and its stewards and are subject to regulations of the commission and sanctions it or its stewards may impose and as a result increases the jurisdiction of the Virginia Racing Commission. The proposed action will not create any disadvantages to the Virginia Racing Commission or the Commonwealth of Virginia.

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

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property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Virginia Racing Commission (VRC) proposes to amend the Regulations Pertaining to Horse Racing With Pari-mutuel Wagering – Stewards to reflect legislative changes enacted during the 2005 General Assembly session. Specifically, these legislative changes mandate that the VRC regulate all participants in horse racing events, allow the VRC to take disciplinary action against participants either through stewards or at a meeting at which a quorum of VRC members is present and requires that disciplinary hearings be decided using a "preponderance of the evidence" standard.

Estimated economic impact. Under the current regulations, the VRC is only allowed to regulate the behavior of horse racing participants who are VRC licensed. This means that participating non-licensees at least had the potential to engage in behavior that skewed the results of a race without fear of punishment. During the 2005 legislative session, the General Assembly added language to § 59.1-369 of the Code of Virginia that allows the VRC to regulate all individuals who participate in horse racing in Virginia. This will benefit racing participants who are licensed as they will no longer be operating with the disadvantage of having to follow rules that other race participants may or may not be following. Individuals who both attend horse races and bet on their outcomes or who bet on races through off-track betting establishments (OTBs) will benefit because this proposed regulation reduces the chance that race outcomes will be manipulated. Nonbetting spectators will also benefit to the extent that they get more enjoyment out of watching a fair horse race than from watching a race that is possibly fixed.

Current regulation allows disciplinary action against licensees if there is a "reasonable suspicion" that the licensee has defied a VRC regulation. A licensee may be fined and, if the suspected offense is serious enough, may lose his license to participate in horse racing events in the Commonwealth. Disciplinary action can even have nationwide consequences since other states will usually refuse licensure to someone whose Virginia license has been suspended or revoked. The proposed regulation incorporates language from the amendments to § 59.1-369 of the Code of Virginia that mandates that the VRC start using a "preponderance of the evidence" standard, rather than the current "reasonable suspicion" standard, for disciplinary hearings. This will benefit horse racing participants, including licensees, because this harder-to-meet standard will lessen the chance of suffering unearned punishment.

Businesses and entities affected. Approximately 4,500 individuals participate in horse racing events in the Commonwealth each year. All of these participants are part of the regulated community and are affected by the proposed regulation.

Localities particularly affected. Localities that encompass horse racing facilities or OTBs have the potential to be particularly affected by the proposed regulation. New Kent County has Virginia's only horse racing facilities. Chesapeake, Hampton, Albemarle, Martinsville, Richmond, Henrico County

and Vinton all have OTBs. A new OTB will also be completed soon in Scott County.

Projected impact on employment. The proposed regulation is not likely to affect employment in the Commonwealth.

Effects on the use and value of private property. Unlicensed participants who will now be under the authority of the VRC may have their net worth reduced through fines, or may even lose their right to participate in racing in the Commonwealth, if they violate VRC regulatory standards. All participants, however, will have a smaller chance of being disciplined because the VRC will now be holding disciplinary hearing using a "preponderance of the evidence" standard rather than the "reasonable suspicion" standard that is used now.

Small businesses: costs and other effects. The proposed changes do not mandate any new bookkeeping requirements for affected small businesses. Small businesses that have not been licensed by VRC but are participants will now be subject to the same range of punishments for misbehavior as licensees are now.

Small businesses: alternative method that minimizes adverse impact. These regulatory changes are mandated by the General Assembly. Because of this, VRC has little or no authority to choose alternate methods.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Racing Commission is in general agreement with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments clarify the authority of the stewards appointed by the Virginia Racing Commission to enforce and interpret the commission's regulations. The definition of "participant" has been added, which provides that certain individuals associated with a horse that is entered to run in Virginia shall be considered as participants and come under the jurisdiction of the commission. Additionally, the amendments provide the commission with the authority to take disciplinary actions through stewards or at a meeting at which a quorum is present and clarify that such disciplinary actions must be determined by a preponderance of the evidence. These amendments are made to conform the regulation to Chapter 700 of the 2005 Acts of Assembly.

11 VAC 10-70-20. Appointment.

~~Three~~ *The commission shall appoint stewards, all of whom shall be employees of the commission, shall be appointed for each race meeting licensed by the commission. The commission, in its discretion, may appoint one or more stewards for the satellite facilities licensed by the commission. To qualify for appointment as a steward, the appointee shall meet the experience, education and examination requirements necessary to be accredited by the Racing Officials Accreditation Program administered by the Universities of Arizona and Louisville, or in the case of harness racing, be licensed as a judge by the United States Trotting Association.*

11 VAC 10-70-30. Senior Commonwealth Steward.

One of the ~~three~~ stewards employed by the commission for ~~each race meeting~~ shall be designated as the Senior Commonwealth Steward. The Senior Commonwealth Steward shall preside at all hearings conducted by the stewards ~~at the race meetings that do not pertain to the operation of the satellite wagering facilities. In matters pertaining to the operation of satellite facilities, a single Any steward shall preside at all~~ *may conduct hearings pertaining to the operation of satellite wagering facilities.*

11 VAC 10-70-40. General powers and authority.

~~The A steward or the stewards for each race meeting or satellite facility licensed by the commission shall be responsible to the commission for the conduct of the race meeting or for the operation of the satellite facilities in accordance with the Code of Virginia and the regulations of the commission. The steward or stewards, shall have authority over all holders of permits, and shall have authority to resolve conflicts or disputes that are related to the conduct of racing or operation of the satellite facilities in accordance with the Code of Virginia and the regulations of the commission.~~

11 VAC 10-70-50. General powers. (Repealed.)

~~The A steward or the stewards shall exercise immediate supervision, control and regulation of horse racing at each race meeting ~~or and at a all satellite facility facilities~~ licensed by the commission and shall be responsible to the commission. The powers of the stewards shall include:~~

- ~~1. Reviewing the conduct of all racing officials, track management, permitted personnel, other persons responsible for the conduct of racing and simulcasting, and patrons as necessary, to ensure compliance with these regulations and the Code of Virginia;~~
- ~~2. Determining all questions, disputes, protests, complaints, ~~or and~~ objections concerning live horse racing which arise during a race meeting or at a satellite facility and simulcast horse racing and enforcing their rulings;~~
- ~~2- 3. Taking disciplinary action against any holder of a permit or participant found violating federal laws, state laws, local ordinances or regulations of the commission;~~
- ~~3- 4. Reviewing applications for permits and either granting or denying the permits to participate in horse racing at race meetings or satellite facilities. Nothing in these regulations shall be construed to prohibit the granting of a permit with such conditions as the stewards may deem appropriate;~~
- ~~4- 5. Enforcing the regulations of the commission in all matters pertaining to horse racing ~~or and~~ satellite facilities;~~
- ~~5- 6. Issuing rulings pertaining to the conduct of horse racing ~~or and~~ satellite facilities;~~
- ~~6- 7. Varying any arrangement for the conduct of a race meeting including but not limited to postponing a race or races, canceling a race, or declaring a race "no contest";~~
- ~~7- 8. Requesting assistance from other commission employees, law-enforcement officials, racing officials,~~

members of *the horse-racing* industry or the licensee's security service in the investigation of possible *statutory or rule infractions violations*;

~~8- 9. Conducting hearings on all questions, disputes, protests, complaints, or objections concerning racing matters ~~or and~~ satellite facilities; and~~

~~9- 10. Substituting another qualified person where any racing official is unable to perform his duties;~~

11. Issuing subpoenas for the attendance of witnesses to appear before them, administering oaths and compelling the production of any of the books, documents, records, or memoranda of any licensee or permit holder. In addition, the stewards may issue subpoenas to compel the production of an annual balance sheet and operating statement of any licensee or permit holder and may require the production of any contract to which such person is or may be a party. The stewards may also issue subpoenas to compel production of records or other documents or relevant things and the testimony of witnesses whenever, in their judgment, it is necessary to do so for the effectual discharge of their duties;

12. Placing horses on the Stewards' List for unsatisfactory performance; and

13. Interpreting the regulations and deciding all questions of racing not specifically covered by the regulations.

11 VAC 10-70-60. Duties.

In addition to the duties necessary and pertinent to the general supervision, control and regulation of race meetings or satellite facilities, the stewards shall have the following specific duties:

1. Causing investigations to be made in all instances of possible violations of federal laws, state laws, local ordinances and regulations of the commission;
2. Being present within the enclosure at a race meeting no less than 90 minutes before post time of the first race and remaining until 15 minutes after the last race is declared "official";
3. Being present in the stewards' stand during the running of all races at race meetings;
4. Administering examinations for applicants applying for permits as trainers, jockeys, apprentice jockeys or farriers to determine the applicants' qualifications for the permits;
5. Determining the identification of horses;
6. Determining eligibility of horses for races restricted to Virginia breds;
7. Determining eligibility of a horse or person to participate in a race;
8. Supervising the taking of entries and the drawing of post positions;
9. Approving or denying requests for horses to be excused from racing;

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10. Locking the totalizator at the start of the race so that no more pari-mutuel tickets may be sold;
11. Determining alleged violations of these regulations in the running of any race through their own observation or by patrol judges and posting the "inquiry" sign ~~on the infield results board~~ when there are alleged violations;
12. Determining alleged violations of these regulations in the running of any race brought to their attention by any participant and posting the "objection" sign ~~on the infield results board~~ when there are alleged violations;
13. Causing the "official" sign to be posted ~~on the infield results board~~ after determining the official order of finish for the purposes of the pari-mutuel payout;
14. Reviewing the video tapes of the previous day's races and determining the jockeys ~~whom the stewards feel who~~ should review the films for instructional purposes;
15. Making periodic inspections of the facilities within the enclosure at race meetings, including but not limited to the stable area, paddock, and jockeys' room;
16. Reporting their findings of their periodic inspections of the facilities to the commission;
17. Filing with the commission a written daily report ~~at during~~ race meetings ~~which~~. *Such report* shall contain a detailed written record of all questions, disputes, protests, complaints or objections brought to the attention of the stewards, a summary of any interviews relating to these actions, copies of any rulings issued by the stewards, and any emergency actions taken and the basis for the actions;
18. Submitting to the commission after the conclusion of the race meeting a written report setting out their findings on the conduct of the race meeting, the condition of the facilities and any recommendation for improvement that they deem appropriate; and
19. ~~Observing the conduct of simulcast horse racing at satellite facilities. Imposing any of the following penalties on a licensee, participant or permit holder for a violation of these regulations:~~
 - a. Issue a reprimand;
 - b. Assess a fine;
 - c. Require forfeiture or redistribution of a purse or award;
 - d. Place a permit holder or participant on probation with or without conditions;
 - e. Suspend a permit holder or participant with or without conditions;
 - f. Revoke a permit;
 - g. Exclude from the grounds under the jurisdiction of the commission; or
 - h. Any combination of the above.

11 VAC 10-70-70. Objections and protests.

The stewards receive and hear all objections lodged by *trainers, owners, jockeys or drivers* after the completion of a

race, and all protests lodged by holders of a permit before or after the completion of a race under the following provisions:

1. The stewards shall keep a written record of all objections and protests;
2. Jockeys shall indicate their intention of lodging an objection in a manner prescribed by the stewards;
3. Drivers shall indicate their intention of lodging an objection immediately after the race by reporting to the patrol judge;
4. If the placement of the starting gate or line is in error, a protest must be made prior to the time that the first horse enters the starting gate or line;
5. Protests, other than those arising out of the running of a race, shall be in writing, clearly stating the nature of the protest, signed by the holder of a permit making the protest, and filed with the stewards at least one hour before post time of the race out of which the protest arises;
6. Protests, arising out of the running of a race, must be made to the stewards as soon as possible after the completion of the race but before the race is declared official ~~and~~. The stewards may call and examine any witness *regarding the protest*;
7. Until a final determination is made on an objection or protest and any administrative remedies and all appeals thereof are exhausted, the purse money for the race shall be retained by the horsemen's bookkeeper or licensee and paid only upon the approval of the stewards or commission; and
8. A *participant* or holder of a permit may not withdraw a protest without the permission of the stewards.

11 VAC 10-70-80. Period of authority.

The period of authority *for each steward* shall ~~commence at a period of time prior to the race meeting and shall terminate at a period of time after the end of the race meeting as designated by the commission. The period of authority for the steward or stewards at satellite facilities shall commence and terminate at a period of time designated by the~~ *be established by contractual arrangement between each steward and the commission.*

11 VAC 10-70-90. Appointment of substitute.

If any steward is absent at the time of the running of the race or is otherwise unable to perform his duties, the other ~~two~~ stewards shall agree on the appointment of a substitute to act for the absent steward. If a substitute is appointed, the commission shall be notified immediately followed by a written report, stating the name of the ~~deputy~~ *substitute* steward, the reason for his appointment, and the races over which the substitute officiated.

11 VAC 10-70-170. Orders following disciplinary actions.

Any disciplinary action taken by the steward or stewards or by the commission shall be provided in writing to the ~~holder of a permit person being disciplined~~, setting forth the federal or state law, local ordinance or regulation that was violated, the date of the violation, the factual or procedural basis of the

finding, the extent of the disciplinary action taken, and the date when the disciplinary action is to take effect. The order following disciplinary action may be hand delivered or mailed to the ~~holder of the permit~~ *person being disciplined*, but in either case, *the mode of delivery shall be duly acknowledged certified by the holder of a permit sender. The sender shall use reasonable efforts to obtain acknowledgement of receipt by the recipient.*

11 VAC 10-90-10. ~~Generally~~ Request for review; stay.

A holder of ~~or applicant for~~ a license or permit or a participant who wishes to contest a denial of a permit or disciplinary action of the stewards may request a review by the commission. A *denial of a license or permit or disciplinary action taken by the steward or stewards shall not be stayed or superseded by the filing of a request for a review unless the commission so orders. At the written request of an aggrieved party, a stay in the implementation of a disciplinary action may be granted by the executive secretary chairman of the commission or a commissioner designated by the chairman. Such request shall be acted upon within 72 hours of the delivery of the written request to the executive secretary. Any granting or denial of a stay shall be effective until the next regularly scheduled meeting of the commission at which time the granting or denial or further stay shall be decided by the commission.*

11 VAC 10-90-30. Content of request.

The request shall state:

1. The disciplinary action ~~of or denial of a permit~~ by the steward or stewards being contested;
2. The basis for the request; and
3. Any additional information the ~~applicant for or holder of a licensee, permit holder or participant~~ may wish to include concerning the request.

11 VAC 10-90-50. Procedures for conducting a commission review.

Reviews of stewards' decisions involving the outcome of a race or riding/driving infractions shall be conducted on the record of the stewards' proceedings. Riding/driving infractions are defined as any violations of the commission's regulations while riding or driving a horse in any race.

All other reviews will be de novo.

The commission shall conduct its review within 45 days of receipt of a request for a review of a denial of a permit or a disciplinary action taken by the steward or stewards. The following provisions shall apply to reviews by the commission:

1. If any commissioner determines that he has a conflict of interest or cannot accord a fair and impartial review, that commissioner shall not take part in the review.
2. The commissioners, in their discretion, may appoint an independent hearing officer to preside at the review and prepare a ~~proposed~~ *recommended* written decision for their consideration. *The commission, at its discretion, may accept the recommendation in its entirety, amend it or reject it.*

3. Unless the parties otherwise agree, a notice setting the date, time and location of the review shall be sent to the ~~holder of or applicant for a permit~~ *person requesting the review and all other owners, trainers, jockeys and drivers who may be affected by the resulting decision* at least 10 days before the date set for the review.

a. *The written notice shall describe the charges, basis thereof and possible penalties.*

b. *The written notice shall inform each party of the right to counsel, the right to present a defense including witnesses for that purpose and the right to cross-examine any witness.*

4. The proceedings shall be open to the public.

a. The proceedings shall be electronically recorded.

b. A court reporter may be used. The court reporter shall be paid by the person who requests him. If the ~~applicant for or holder of a permit~~ *person requesting the review* elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.

5. The proceedings shall include the following:

a. The commission or *hearing officer* may issue subpoenas to compel the attendance of witnesses or ~~for~~ the production of ~~reports, books, papers, registration documents or any other materials and other relevant evidence~~ it deems appropriate. However, nothing in this section shall be taken to authorize discovery proceedings;

b. Oaths shall be administered to all witnesses;

c. The commission may examine any witnesses;

d. Written notice shall be given to the holder of or applicant for a permit in a reasonable time prior to the review;

e. The written notice shall inform the holder of a permit of the charges against him, the basis thereof and possible penalties;

f. The holder of a permit shall be informed of his right to counsel, the right to present a defense including witnesses for that purpose, and the right to cross-examine any witnesses; *and*

g. The commission may grant a continuance of any review for good cause; ~~and~~.

~~h. A record of the proceedings shall be made.~~

6. ~~The Review proceeding is a hearing~~ *proceedings regarding riding or driving infractions shall be on the record of the stewards hearing and not a new hearing; therefore, presentations by both sides will be limited to arguments and comments regarding the record of the stewards hearing.*

7. *In conducting a review of rulings of the stewards regarding riding or driving infractions, the commission, in its discretion, may allow new evidence to be introduced which, through the exercise of reasonable diligence, could not have been ~~found~~ obtained at the time of the stewards*

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hearing. *If the commission determines additional evidence to be introduced may affect the outcome of the case, the commission, in its discretion, may remand the case to the stewards for further review. The stewards shall consider such additional evidence as directed by the commission and, if necessary, in the stewards' discretion, will conduct a new, additional or supplemental hearing. The stewards shall then issue a new decision and order subject to commission review as herein provided.*

VA.R. Doc. No. R06-305; Filed July 28, 2006, 9:14 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (amending 12 VAC 30-70-301).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 20, 2006.

(See Calendar of Events section for additional information)

Effective Date: November 6, 2006.

Agency Contact: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or e-mail william.lessard@dmass.virginia.gov.

Basis: Medicaid is authorized to make additional payments to hospitals with a disproportionate share of uncompensated care. In the 1993 OBRA statute, Congress limited DSH payments to a hospital's uncompensated care costs from serving Medicaid and uninsured patients. State regulations have mirrored this limit. In 2000, Congress passed the Benefits Improvement and Protection Act (BIPA), which permits states to temporarily increase the DSH limit to 175% of uncompensated care costs for state fiscal years 2004 and 2005. DMAS has already increased the DSH limit for state fiscal year 2005. This regulatory change would adopt the federal limit by reference so that it would include the 175% limit for both state fiscal years 2004 and 2005. If changes are made to the federal DSH limit in the future, it would not be necessary to modify state regulations. The regulation would be consistent with changes to the State Plan approved by CMS.

Purpose: DMAS wishes to adopt the highest DSH limits as possible. This increases its flexibility in managing DSH payments, particularly payments to UVA and VCU Health Systems to cover its indigent care losses. DMAS receives a fixed DSH allotment for each federal fiscal year. If the allotment is not spent in that year, it can be carried forward and spent in a future year. DSH payments in any one year

may consist of portions of allotments from several federal fiscal years. DMAS can spend the allotment for a specific year, however, only to the extent that the payments to each hospital do not exceed the DSH limit for that year for each hospital. DMAS may lose some DSH allotment for FY 2004 if it does not adopt the DSH limit permitted in federal law.

Substance: Federal law limits what states can pay to hospitals that serve a disproportionately higher Medicaid and uninsured population. This limit is reflected in 12 VAC 30-70-301 D. The regulation deletes a reference to OBRA 1993, which amended § 1923(g) of the Social Security Act, and instead substitutes a reference to § 1923(g) of the Social Security Act. The regulation deletes any description of the limit, which is unnecessary and may change.

Issues: Section 1902(a)(13) of the Social Security Act (the Act) provides that states "take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs." These hospitals, classified as Disproportionate Share Hospitals (DSH), sustain financial losses due to the lower overall payments they receive in serving a large number of Medicaid and uninsured patients. As a result such hospitals require additional state payments in order to maintain their fiscal integrity. Section 1923 of the Act requires states to provide additional Medicaid payments to hospitals that serve larger Medicaid and uninsured populations. These additional payments are made in the form of lump sum payments, referred to as DSH payments. DSH payments are essential to maintaining access to health care for medically vulnerable populations.

Since 1993, the Act has prohibited states from paying more than 100% of the uncompensated costs of disproportionate share hospitals. In 2000, however, the Benefits Improvement and Protection Act (BIPA) permitted states to raise DSH payment levels up to 175% of uncompensated care costs for two fiscal years after 2002. In a prior regulation, the 175% DSH limit was adopted for SFY 2005. The current regulatory change would incorporate any changes to the DSH limit automatically, including the higher DSH limit for SFY 2004 and SFY 2005. Increasing the DSH limit gives the Commonwealth maximum flexibility in managing its DSH payments and makes it unnecessary to change the DSH limit when the federal government changes it. Without the higher limit, DMAS might lose some of its FFY 2004 DSH allotment. This does not limit the amount that DMAS would pay in the short term, but DMAS would potentially run out of DSH in the future.

Rationale for Using Fast-Track Process: This regulatory action will give DMAS maximum flexibility to manage its DSH payments so that it will not lose DSH allotment for FFY 2004. There is no emergency regulatory authority for this change, but it is not expected to be controversial. The regulation simply links DSH payments to the limits in federal legislation.

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 will replace the specific language in state regulations pertaining to the disproportionate share payment limit for hospitals with a direct reference to the federal Social Security Act.

Estimated economic impact. Hospitals receive disproportionate share hospital (DSH) payments from Medicaid for serving a high percentage of Medicaid and uninsured patients. DSH payments help hospitals cover their uncompensated care costs. Under the 1993 Omnibus Budget Reconciliation Act, the amount of DSH payments a hospital can receive is limited to 100% of uncompensated costs. However, in 2000, the federal government allowed states through the Benefits Improvement and Protection Act to temporarily increase the DSH payment limit up to 175% of the uncompensated care costs for public hospitals for fiscal years 2004 and 2005. Consequently, these regulations were amended to reflect the changes in the federally established DSH limits.

The proposed changes will incorporate by reference § 1923(g) of the federal Social Security Act the disproportionate share payment limit for hospitals, instead of amending the regulations to adopt the same limits every time a federal change occurs. This proposed change will automatically conform to the federal DSH limit changes preventing delay and avoiding costs associated with amending the regulations according to the rules established by the Administrative Process Act.

In addition, the proposed incorporation of the federal DSH limit by reference might enable the Commonwealth to claim approximately \$30 million in federal matching funds in the future. Thus, the main impact of the proposed change is to increase the Commonwealth's chances to claim up to \$30 million in federal funds in the future to supplement the Medicaid operating budget.

Even though no immediate economic impact is expected from this change, in the event that the Commonwealth draws additional federal matching funds, the net economic impact on Virginia's economy would likely be positive. The additional up to \$30 million in federal match would be a net injection into the economy without any offsetting effects somewhere else in Virginia. This increase in Medicaid operating budget would spill over to some of the Medicaid recipients by maintaining or enhancing services that would not otherwise be available. Improved services could also improve the overall health status of Medicaid recipients and produce some long-term cost savings.

Businesses and entities affected. The proposed changes might affect some or all of Medicaid recipients and the two

state teaching hospitals, depending on if the federal matching funds are materialized and the way they are spent.

Localities particularly affected. The proposed changes are unlikely to affect any one locality more than others.

Projected impact on employment. The proposed changes are not expected to result in any immediate economic impact. Thus, no direct impact on employment is anticipated. In the event that the Commonwealth is able to draw additional federal matching funds, the proposed changes would likely have an expansionary effect on the state economy creating a positive effect on demand for labor.

Effects on the use and value of private property. The providers that might be affected are two public hospitals. Therefore, even if the Commonwealth is able to draw additional federal matching funds, no significant effect on the use and value of private property is expected.

Small businesses: costs and other effects. The proposed regulations might affect only two public teaching hospitals.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations are not likely to have direct impact on any small businesses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care: Conform DSH Limit to Federal Legislation (12 VAC 30-70-301). The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding this regulation.

Summary:

This regulation conforms the disproportionate share hospital (DSH) supplemental payment limit for Medicaid hospitals to the limit specified in federal legislation. State regulation has limited such payments to 100% of a hospital's actual uncompensated costs associated with services provided to Medicaid and uninsured patients consistent with the limit established in federal legislation in 1993. More recent federal legislation modified the limit for SFY 2004 and 2005 to 175% of the regular limit. In a recent regulatory change, the Department of Medical Assistance Services adopted the higher limit for SFY 2005. Rather than change state regulation whenever the federal DSH limit changes, this regulatory action references the DSH limit in federal law.

12 VAC 30-70-301. Payment to disproportionate share hospitals.

A. Payments to disproportionate share hospitals (DSH) shall be prospectively determined in advance of the state fiscal year to which they apply. The payments shall be made on a quarterly basis, shall be final, and shall not be subject to settlement except when necessary due to the limit in subsection D of this section.

B. Hospitals qualifying under the 15% inpatient Medicaid utilization percentage shall receive a DSH payment based on

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the hospital's type and the hospital's Medicaid utilization percentage.

1. Type One hospitals shall receive a DSH payment equal to:

a. The sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433.

b. Multiplied by the Type One hospital DSH Factor. The Type One hospital DSH factor shall equal a percentage that when applied to the DSH payment calculation yields a DSH payment equal to the total calculated using the methodology outlined in subdivision 1 a of this subsection using an adjustment factor of one in the calculation of operating payments rather than the adjustment factor specified in subdivision B 1 of 12 VAC 30-70-331.

2. Type Two hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times the hospital's Medicaid operating reimbursement, times 1.2074 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times the hospital's Medicaid operating reimbursement, times 1.2074.

C. Hospitals qualifying under the 25% low-income patient utilization rate shall receive a DSH payment based on the hospital's type and the hospital's low-income utilization rate.

1. Type One hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times 17, times the hospital's Medicaid operating reimbursement.

2. Type Two hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

3. Calculation of a hospital's low-income patient utilization percentage is defined in 42 USC § 1396r-4(b)(3).

D. No DSH payments shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 § 13621. ~~A DSH payment during a fiscal year shall not exceed the sum of: § 1923(g) of the Social Security Act.~~

~~1. Medicaid allowable costs incurred during the year less Medicaid payments, net of disproportionate share payment adjustments, for services provided during the year. Costs and payments for Medicaid recipients enrolled in capitated managed care programs shall be considered Medicaid costs and payments for the purposes of this section.~~

~~2. Costs incurred in serving persons who have no insurance less payments received from those patients or from a third party on behalf of those patients. Payments made by any unit of the Commonwealth or local government to a hospital~~

~~for services provided to indigent patients shall not be considered to be a source of third party payment.~~

E. Each hospital's eligibility for DSH payment and the amount of the DSH payment shall be calculated at the time of each rebasing using the most recent reliable utilization data and projected operating reimbursement data available. The utilization data used to determine eligibility for DSH payment and the amount of the DSH payment shall include days for Medicaid recipients enrolled in capitated managed care programs. In years when DSH payments are not rebased in the way described above, the previous year's amounts shall be adjusted for inflation.

For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recently settled Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

VA.R. Doc. No. R06-309; Filed August 2, 2006, 11:27 a.m.

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Title of Regulation: **12 VAC 30-150. Uninsured Medical Catastrophe Fund (amending 12 VAC 30-150-40, 12 VAC 30-150-50, 12 VAC 30-150-70, 12 VAC 30-150-80 and 12 VAC 30-150-90).**

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

Public Hearing Date: N/A -- Public comments may be submitted until October 20, 2006.

(See Calendar of Events section for additional information)

Effective Date: November 6, 2006.

Agency Contact: Patricia Taylor, Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6333, FAX (804) 786-1680, or e-mail patricia.taylor@dmas.virginia.gov.

Basis: The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC 1396a) provides governing authority for payments for services. Sections 32.1-325 and 32.1-351 of the Code of Virginia grant to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and the Title XXI Plan (FAMIS), respectively. 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. Section 32.1-324.3 of the Code of Virginia establishes the Uninsured Medical Catastrophe Fund on the books of the Comptroller and authorized the Board of Medical Assistance to promulgate regulations that (i) further define an uninsured medical catastrophe, (ii) establish procedures for distribution of moneys in the Fund to pay for the costs of treating uninsured medical catastrophes, (iii) establish application procedures, and (iv) establish criteria for eligibility for assistance from the Fund and the prioritization and allocation of available moneys among applicants for assistance from the Fund.

Purpose: The purpose of this regulatory action is to streamline the application approval process and fund disbursement to providers. This regulatory action will lessen the burden placed on the applicant and provide more efficient payment disbursements to providers. Currently the applicant must obtain a signed agreement from one provider willing to accept payment for all services rendered that are identified on the Treatment Plan and disburse funds to other medical providers rendering services on the approved Treatment Plan. The proposed changes will allow the UMCF to disburse payment to more than one provider who rendered services on an approved Treatment Plan. The changes also provide more efficient administration of the fund by DMAS and allow more citizens to be served.

The current UMCF regulations, while well-intended, do not take into consideration the applicant's medical condition, the complexity of the Fund's program requirements, and the ability for potential applicants to communicate those program requirements to providers with sufficient detail to secure services and obtain a signed agreement.

Substance: The sections of the regulations affected by these suggested changes are 12 VAC 30-150-40 (Eligibility criteria), 12 VAC 30-150-50 (Treatment plan), 12 VAC 30-150-70 (Contracts with providers), 12 VAC 30-150-80 (Payments), and 12 VAC 30-150-90 (Application procedures and waiting list). The major changes proposed for the program are to allow funds to be disbursed to more than one provider for services approved on the treatment plan, to allow funds to be disbursed for services provided as of the date the application is approved, and to decrease the application processing time period from 45 to 30 days for applicants to provide information to determine eligibility.

Issues: The primary advantage of this action is to simplify and streamline the application process and program operation for Fund applicants to have their medical providers paid through the UMCF. There are no disadvantages to the public, the department, or the Commonwealth in the implementation of these suggested changes. The department has worked closely with the Fund originators and the provider community and anticipates no negative response concerning these proposed changes.

Rationale for Using Fast-Track Process: This action is being taken to simplify and streamline the application process and program operation for applicants to receive funds through the UMCF to pay for treatment for life-threatening injury or illness of the uninsured. These changes will not allow more individuals to become eligible who would not otherwise be approved, but only allow a more efficient process. The Fast-Track process allows the most expedient implementation of these regulations, which will ease the burdens on Fund applicants and potential providers alike. DMAS does not expect any opposition to or controversy concerning this action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the proposed regulation. The substantive proposed changes that will streamline the functioning of the Uninsured Medical Catastrophe Fund include (i) allowing the Department of Medical Assistance Services to disburse funds

to multiple providers, (ii) allowing disbursement of additional funds for a recipient in addition to the original amount approved, and (iii) reducing the application processing times. The remaining proposed changes are mainly clarifications of the current requirements.

Result of analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for one change.

Estimated economic impact. These regulations apply to the Uninsured Medical Catastrophe Fund established in 1999. The fund has been used to provide a source of payment for medical treatment of uninsured medical catastrophes. The fund received 214 applications, approved 26 applications, and is currently serving five applicants. Since its inception, the Department of Medical Assistance Services (DMAS) identified a number of difficulties undermining the effective administration of the fund.

Current regulations require a provider to be a designee for disbursement of funds to all providers involved in the treatment of a recipient. The designated provider receives a global fee for all of the services in the treatment plan and is required to disburse all funds to other medical providers rendering services. However, many providers are unwilling to or unable to enter into a binding agreement with DMAS to assume the responsibility of disbursing all the payments to all of the providers rendering services. The difficulty associated with the disbursement methodology has been causing denial of services to some otherwise eligible applicants and has been placing unnecessary administrative burden on the applicant and the providers. The proposed changes will allow DMAS to reimburse service providers individually for the services rendered. This proposed change will remove an administrative barrier for recipients in accessing services and increase their chances of receiving the treatment they need. According to DMAS, reimbursement of funds to individual providers is expected to add only minimally to the administrative costs.

Another proposed change will provide DMAS authority to commit additional funding for additional services needed by a recipient beyond the services identified in the original treatment plan. Currently, the fund does not provide any additional funding for services identified after the initial treatment plan is approved. Because the information regarding the needed services is imperfect at the time of the initial treatment plan, allowing flexibility to provide funding for additional services will increase the chances of a recipient to receive those services from the fund that would contribute to the health and well-being of the recipient. However, provision of additional funding will reduce the available funding for other recipients on the waiting list. Because the net benefit of each dollar directed toward treatment of a catastrophic illness depends on the individual circumstances, the net impact of shifting some funds that would have been available to the applicants on the waiting list to the applicants already receiving services cannot be determined conclusively.

The proposed changes will also reduce the time allowed to provide requested information for application from 45 days to 30 days and the time allowed to make a determination on an

Fast-Track Regulations

application from 60 days to 45 days. According to DMAS, information necessary for an application is generally furnished within the first 30 days by the applicants. Thus, no significant effect is expected on the future applicants. Also, DMAS indicates that most eligibility decisions are made in less than 45 days and consequently this particular change is not likely to create any significant effect on the agency.

The proposed regulations also include a number of other minor revisions and clarifications that are not expected to create any significant economic effects. For example, the proposed changes will allow payment for services received between the date of the application and the date of the provider agreement. This change would normally cause an increase in the payments. However, currently the provider agreement could be back dated to the approval date of the application. As a result, this particular change is not expected to create any significant economic effects.

Businesses and entities affected. The proposed changes will primarily affect the individuals applying for and receiving services from the Uninsured Medical Catastrophe Fund. Approximately 214 individuals applied for the program since 1999 and 26 were provided services.

Localities particularly affected. The proposed regulations will not affect any locality more than others.

Projected impact on employment. The proposed regulations are not likely to create any significant impact on employment.

Effects on the use and value of private property. The proposed regulations are not likely to create any significant impact on the use and value of private property.

Small businesses: costs and other effects. The proposed regulations are not likely to create any costs or other effects on small businesses.

Small businesses: alternative method that minimizes adverse impact. The proposed regulations are not anticipated to have an adverse impact on small businesses.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected

small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning the Uninsured Medical Catastrophe Fund (UMCF) (12 VAC 30-150-40 through 12 VAC 30-150-100). The agency raises no issues with the analysis prepared by the Department of Planning and Budget.

Summary:

In 1999 the General Assembly created the Uninsured Medical Catastrophe Fund (UMCF or the Fund) under § 32.1-324.3 of the Code of Virginia. The General Assembly authorized the Department of Medical Assistance Services (DMAS) to oversee the Fund and to promulgate regulations to administer the UMCF. DMAS has made no changes to the UMCF regulations since the establishment of the Fund. DMAS has determined that the Fund is hindered by regulatory requirements that impede the efficient operation of the program. The UMCF is a fund-limited program that places much of the responsibility for medical care on Fund applicants. Applicants are required to locate a provider willing to accept structured Fund payments for medical services. Because the Fund does not reimburse providers in the usual manner that medical claims are paid, Fund applicants must quickly master the complicated UMCF requirements and be able to explain these complex requirements to potential providers. The changes proposed in this regulatory action seek to address these burdens on Fund recipients, providers, and on DMAS staff and will help ensure greater simplicity and efficiency of administration.

The major changes proposed for the program are to allow funds to be disbursed to more than one provider for services approved on the treatment plan, to allow funds to be disbursed for services provided as of the date the application is approved, and to decrease the application processing time period from 45 to 30 days for applicants to provide information to determine eligibility.

12 VAC 30-150-40. Eligibility criteria.

An individual is eligible to receive Uninsured Medical Catastrophe Funds for the period of time that he:

1. Is a citizen of the United States or a legally resident alien;
2. Is a resident of the Commonwealth (eligibility will end if the recipient is no longer a resident);
3. Has a gross income equal to or less than 300% of the federal nonfarm poverty income guidelines as published in the United States Code of Federal Regulations, 66 CFR 10695 (Feb. 16, 2001), updated each July 1;
4. Has a life-threatening illness or injury;
5. Is uninsured for the needed treatment on the date of application and is not eligible for coverage for the needed treatment through private insurance or federal, state, or

local government medical assistance programs. *If an individual becomes insured for the needed treatment after the date of application, the UMCF will only pay for services not otherwise covered by the existing insurance.*

12 VAC 30-150-50. Treatment plan.

A. Except as otherwise provided in this section, any medical services that are not experimental or investigational may be covered under a treatment plan.

B. Services provided for in the treatment plan must be for a course of treatment approved by DMAS to remediate, cure, or ameliorate the life-threatening illness or injury. The course of treatment proposed in the plan may not exceed 12 months.

C. The treatment plan should reflect the standard of practice for treating the life-threatening illness or injury given the applicant's health status at the time the treatment plan is approved. Treatment plans will not be approved for any illness or injury that is expected to be terminal even with the treatment.

D. DMAS may approve the treatment plan as submitted, modify the treatment plan, or deny the treatment plan. DMAS may review and revise treatment plan decisions based on additional information up until the time a contract is signed. A treatment plan may only be altered if, during the course of treatment approved, the medical condition of the person substantially changes and renders the original course of treatment no longer appropriate, as determined by the contracting health provider. *If any alteration increases the established dollar amount, additional funds can be approved if available. Any alteration cannot exceed either the established total dollar amount or the one-year time frame from initial authorization.*

E. The UMCF is not responsible for maintenance medications or additional treatments beyond the course of treatment approved by DMAS and contracted with a provider.

F. The UMCF will not commit funds or pay for services provided prior to the date the ~~contract is signed between DMAS and the contracting provider~~ *application is approved.*

G. Covered services include specialized medical treatment, hospitalization, or both, to include the following to the extent they are part of the approved treatment plan:

1. Inpatient hospital services;
2. Outpatient hospital services and ambulatory surgical centers;
3. Ambulatory care;
4. Laboratory and x-ray services;
5. Physician's services and other ambulatory care;
6. Medical care furnished by licensed practitioners within the scope of their practice as defined by state law;
7. Prescribed drugs; and
8. Rehabilitative services to the extent necessary to recover from medical treatment.

H. Noncovered services include:

1. Transportation services;
2. Mental health services;
3. Nursing facility services;
4. Case management;
5. Hospice care;
6. Private duty nursing services;
7. Prosthetic devices;
8. Eyeglasses, dentures, hearing aids and other similar devices;
9. Alternative medicine therapies such as homeopathic remedies, hypnosis, or herbal remedies; and
10. Emergency services.

I. Only the following organ and tissue transplant procedures will be covered:

1. Kidney;
2. Liver;
3. Heart;
4. Lung; and
5. Bone marrow.

J. Patients receiving transplants must be acceptable for coverage and treatment by meeting the same selection criteria (except for the age limitation) outlined in 12 VAC 30-50-540, 12 VAC 30-50-560, and 12 VAC 30-50-570 of the Virginia Title XIX State Plan for Medical Assistance.

12 VAC 30-150-70. Contracts with providers.

A. It shall be the responsibility of the applicant to find a qualified provider willing to contract with DMAS under the terms in this section.

B. Reimbursement for covered services shall be a global fee based on existing Medicaid *or Medicare rates (whichever is higher)* or Medicaid reimbursement methodology to cover all services in the approved treatment plan. The global fee will cover: procurement costs for transplants; any hospital costs from admission to discharge; total physician costs for all physicians providing services during the course of treatment; and any other medical or drug costs associated with the treatment plan approved by DMAS.

C. A provider may agree to less than the full global fee as long as the provider agrees to complete the treatment plan with no additional payment by the applicant or on behalf of the applicant subject to subsection D of this section.

D. A provider may accept private funds raised on behalf of the applicant. The sum of private funds plus UMCF commitment may not exceed the global fee determined in subsection B of this section. Private funding must be fully disclosed in the contract, and the contract cannot be contingent on funds to be raised in the future. Private funds are not considered part of the applicant's income for purposes of determining eligibility. Private funds are not a factor in determining access to the UMCF or its waiting list.

Fast-Track Regulations

E. A contract shall commit Uninsured Medical Catastrophe Funds to a course of treatment for up to one year from the date the contract is signed.

F. Reimbursement agreed to in the contract pursuant to this section shall constitute payment in full.

G. An application shall be denied if no provider is willing to sign a contract pursuant to this section within 30 days after the date all of the following are in place: a favorable determination of eligibility, approval of the treatment plan, and the availability of funds.

H. Facilities providing transplant procedures must be recognized as being capable of providing high quality care in the performance of the transplant by meeting the selection criteria outlined in 12 VAC 30-50-540, 12 VAC 30-50-560, and 12 VAC 30-50-570 under the Virginia Title XIX State Plan for Medical Assistance.

12 VAC 30-150-80. Payments.

A. Payments shall be made only to providers that have contracted with DMAS in accordance with 12 VAC 30-150-70. No payments shall be made directly to eligible individuals or applicants.

B. Payments are based on a global fee as provided for in 12 VAC 30-150-70. *Payments may be made to more than one provider if it is determined that one global payment cannot be made due to a provider's limitation to disburse funds to other medical providers. An individual provider's payments shall be based upon that provider's component of the global fee.* DMAS may establish a schedule of payments in the contract consistent with phases of the treatment plan. Payments will be made to contracting providers upon the completion of the treatment or phases of the treatment as specified in the contract.

C. Any committed funds not paid out by the fund within one year from the date of the contract will revert back to the UMCF and will be made available for other applicants. If a recipient dies during the contract period, the UMCF is responsible for payment of that portion of the treatment plan that has been completed. The remainder of the committed funds revert back to the UMCF to be available for other applicants.

12 VAC 30-150-90. Application procedures and waiting list.

A. An application for assistance under the Uninsured Medical Catastrophe Fund must be on a form prescribed by DMAS and signed by the applicant. Funds will be committed on behalf of eligible individuals on a first-come, first-served basis based on the date and time the original signed application is received by DMAS or its agent.

B. Applicants must: (i) provide a statement signed by a physician licensed in the state in which he practices who has examined the individual certifying that the individual has a life-threatening illness or injury as defined in this regulation and (ii) submit a treatment plan developed by a potential contracting provider and signed by a physician licensed in the state in which he practices.

C. It is the responsibility of the applicant to provide financial and medical information necessary to determine eligibility and approve the treatment plan. Failure to complete the application, submit the items in subsection B of this section, or provide requested information within ~~45~~ 30 days of the date of the original signed application is grounds for denial.

D. Eligibility for Uninsured Medical Catastrophe Funds and approval of the treatment plan shall be determined by DMAS within ~~60~~ 45 days of the date the original signed application was received. DMAS will not fully evaluate an application if it has determined that there is at least one cause for disqualification. DMAS shall advise in writing all applicants within ~~60~~ 45 days of its determination about their applications.

E. DMAS may establish a waiting list if funds are insufficient to make commitments for all applicants. Applicants will be placed on the waiting list in the order that the original signed application was received by DMAS or its agent. An applicant will be taken off the waiting list if (i) there is an adverse determination regarding eligibility and no expedited appeal has been requested, (ii) the treatment plan is denied, (iii) the applicant requests to be taken off the waiting list, or (iv) the applicant dies. An applicant who prevails on appeal or in circuit court will be restored to the waiting list based on the date of the original signed application, but this action does not affect any contracts signed in the interim.

F. If more than 60 days have elapsed between the date that DMAS initially determines an applicant eligible and approves the treatment plan and the date that funds become available, DMAS may review and revise the eligibility and treatment plan decisions. DMAS may require applicants to update the information provided in the original application.

G. An application may be denied if no provider is willing to contract with DMAS pursuant to 12 VAC 30-150-70 within 30 days of a favorable determination of eligibility, approval of the treatment plan, and the availability of funds.

H. DMAS may establish additional application procedures as necessary.

VA.R. Doc. No. R06-310; Filed August 2, 2006, 11:24 a.m.

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 21, 2006

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of adoption of adjusted prima facie rates for credit life and credit accident and sickness insurance pursuant to §§ 38.2-3725, 38.2-3726, 38.2-3727 and 38.2-3730 of the Code of Virginia

ORDER ADOPTING ADJUSTED PRIMA FACIE RATES FOR THE TRIENNIUM COMMENCING JANUARY 1, 2007

Pursuant to an order entered June 13, 2006, after notice to all insurers licensed by the Bureau of Insurance (the "Bureau") to transact the business of credit life and credit accident and sickness insurance in the Commonwealth of Virginia, the State Corporation Commission (the "Commission") conducted a hearing on July 20, 2006, for the purpose of considering any public or other comment on the adoption of adjusted prima facie rates for credit life insurance and credit accident and sickness insurance proposed by the Bureau pursuant to Chapter 37.1 of Title 38.2 of the Code of Virginia and the Credit Insurance Experience Exhibits filed by licensed insurers for the reporting years 2003, 2004 and 2005. Represented by its counsel, the Bureau, by its witness, appeared before the Commission in support of the proposed adjusted prima facie rates. No public witnesses appeared before the Commission, and no written comments were filed.

AND THE COMMISSION, having considered the record herein, the recommendations of the Bureau and the law applicable to these issues, is of the opinion, finds and ORDERS that the adjusted prima facie rates for credit life and credit accident and sickness insurance, as proposed by the Bureau, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED pursuant to the provisions of Chapter 37.1 of Title 38.2 of the Code of Virginia and shall be effective for the triennium commencing January 1, 2007.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Jacqueline K. Cunningham, Deputy Commissioner, Bureau of Insurance, State Corporation Commission who (i) shall cause a copy hereof together with attachments, as and for the notice to insurers required by Code of Virginia § 38.2-3725, to be sent to every insurance company licensed by the Bureau of Insurance to transact the business of credit life and credit accident and sickness insurance in the Commonwealth of Virginia; and (ii) who shall file in the record of this proceeding an affidavit evidencing notice compliance with this order.

On or before July 28, 2006, the Commission's Division of Information Resources shall make available this Order and the attached adjusted rates on the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

ATTACHMENT

Case No. INS-2006-00013

ADJUSTED PRIMA FACIE

CREDIT LIFE

AND

CREDIT ACCIDENT AND SICKNESS

INSURANCE RATES

TO BE EFFECTIVE JANUARY 1, 2007

2007 – 2009 TRIENNIAL CREDIT LIFE INSURANCE RATES

\$0.5530 per month per \$1,000.00 of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis.

\$0.3530 per \$100.00 of initial indebtedness repayable in twelve equal monthly installments.

General Notices/Errata

**2007 - 2009 Prima Facie Credit Accident and Sickness Rates
Single Premium Rates per \$100 of Initial Insured Indebtedness
Repayable in Equal Monthly Installments**

<u>Benefit Period (Months)</u>	<u>7 Day Coverages</u>		<u>14 Day Coverages</u>		<u>30 Day Coverages</u>	
	<u>Retroactive</u>	<u>Non-Retroactive</u>	<u>Retroactive</u>	<u>Non-Retroactive</u>	<u>Retroactive</u>	<u>Non-Retroactive</u>
1	1.42	1.08	1.33	0.82	1.00	0.45
2	1.71	1.38	1.56	1.06	1.14	0.59
3	1.92	1.59	1.73	1.23	1.25	0.70
4	2.07	1.73	1.86	1.38	1.34	0.80
5	2.18	1.86	1.97	1.49	1.41	0.87
6	2.30	1.97	2.06	1.59	1.47	0.94
7	2.36	2.04	2.13	1.65	1.53	1.00
8	2.43	2.12	2.19	1.72	1.58	1.03
9	2.50	2.17	2.25	1.77	1.60	1.09
10	2.54	2.23	2.30	1.83	1.64	1.14
11	2.59	2.28	2.35	1.88	1.68	1.17
12	2.62	2.32	2.38	1.92	1.71	1.20
13	2.67	2.35	2.42	1.96	1.74	1.23
14	2.70	2.40	2.46	1.99	1.77	1.26
15	2.73	2.43	2.50	2.03	1.79	1.29
16	2.78	2.48	2.53	2.07	1.83	1.33
17	2.81	2.52	2.56	2.11	1.85	1.35
18	2.86	2.55	2.62	2.15	1.89	1.38
19	2.90	2.60	2.64	2.18	1.92	1.41
20	2.93	2.63	2.68	2.23	1.94	1.44
21	2.98	2.68	2.71	2.26	1.97	1.47
22	3.01	2.71	2.74	2.30	2.01	1.50
23	3.06	2.73	2.79	2.34	2.03	1.53
24	3.10	2.80	2.82	2.37	2.06	1.56
25	3.11	2.81	2.85	2.41	2.08	1.58
26	3.13	2.84	2.88	2.43	2.10	1.60
27	3.18	2.88	2.91	2.46	2.12	1.61
28	3.20	2.90	2.92	2.49	2.14	1.64
29	3.22	2.92	2.94	2.52	2.16	1.65
30	3.26	2.94	2.98	2.54	2.17	1.68

**2007 - 2009 Prima Facie Credit Accident and Sickness Rates
Single Premium Rates per \$100 of Initial Insured Indebtedness
Repayable in Equal Monthly Installments**

<i>Benefit Period (Months)</i>	<i>7 Day Coverages</i>		<i>14 Day Coverages</i>		<i>30 Day Coverages</i>	
	<u>Retroactive</u>	<u>Non-Retroactive</u>	<u>Retroactive</u>	<u>Non-Retroactive</u>	<u>Retroactive</u>	<u>Non-Retroactive</u>
31	3.28	2.99	3.01	2.55	2.21	1.71
32	3.30	3.01	3.03	2.60	2.23	1.72
33	3.32	3.03	3.06	2.62	2.24	1.74
34	3.36	3.07	3.08	2.64	2.27	1.77
35	3.39	3.09	3.10	2.68	2.30	1.78
36	3.41	3.11	3.12	2.69	2.31	1.80
37	3.44	3.13	3.16	2.71	2.32	1.83
38	3.46	3.16	3.18	2.73	2.35	1.84
39	3.48	3.19	3.20	2.74	2.35	1.86
40	3.50	3.21	3.22	2.78	2.37	1.88
41	3.51	3.23	3.24	2.81	2.40	1.91
42	3.53	3.25	3.27	2.82	2.42	1.92
43	3.57	3.27	3.29	2.85	2.43	1.93
44	3.59	3.29	3.30	2.87	2.45	1.96
45	3.61	3.31	3.32	2.89	2.47	1.97
46	3.63	3.33	3.35	2.91	2.49	1.98
47	3.66	3.36	3.37	2.93	2.50	2.02
48	3.66	3.39	3.40	2.94	2.52	2.03
49	3.69	3.41	3.41	2.98	2.53	2.04
50	3.70	3.42	3.43	3.00	2.54	2.06
51	3.71	3.44	3.45	3.01	2.55	2.08
52	3.74	3.46	3.46	3.03	2.57	2.10
53	3.76	3.48	3.48	3.06	2.60	2.11
54	3.78	3.50	3.50	3.07	2.62	2.12
55	3.80	3.51	3.51	3.09	2.62	2.14
56	3.81	3.53	3.52	3.10	2.64	2.16
57	3.84	3.56	3.56	3.12	2.66	2.16
58	3.85	3.58	3.58	3.14	2.68	2.18
59	3.86	3.60	3.59	3.17	2.68	2.21
60	3.89	3.61	3.61	3.19	2.70	2.22

General Notices/Errata

**2007 - 2009 Prima Facie Credit Accident and Sickness Rates
Single Premium Rates per \$100 of Initial Insured Indebtedness
Repayable in Equal Monthly Installments**

Benefit Period (Months)	7 Day Coverages		14 Day Coverages		30 Day Coverages	
	Retroactive	Non-Retroactive	Retroactive	Non-Retroactive	Retroactive	Non-Retroactive
61	3.89	3.63	3.63	3.21	2.71	2.23
62	3.92	3.66	3.65	3.22	2.72	2.25
63	3.94	3.66	3.66	3.24	2.73	2.27
64	3.96	3.68	3.67	3.26	2.74	2.29
65	3.98	3.70	3.69	3.27	2.77	2.30
66	3.99	3.71	3.70	3.29	2.78	2.31
67	4.00	3.72	3.71	3.30	2.80	2.32
68	4.02	3.75	3.74	3.32	2.81	2.34
69	4.04	3.77	3.75	3.33	2.82	2.35
70	4.05	3.78	3.78	3.36	2.83	2.36
71	4.07	3.80	3.79	3.38	2.85	2.38
72	4.09	3.81	3.80	3.40	2.87	2.40
73	4.09	3.83	3.82	3.41	2.88	2.42
74	4.12	3.84	3.83	3.43	2.89	2.42
75	4.13	3.85	3.84	3.45	2.91	2.44
76	4.15	3.87	3.85	3.46	2.91	2.45
77	4.17	3.89	3.87	3.47	2.92	2.47
78	4.18	3.89	3.89	3.48	2.93	2.49
79	4.20	3.92	3.89	3.50	2.94	2.49
80	4.21	3.94	3.92	3.51	2.97	2.51
81	4.23	3.96	3.94	3.52	2.99	2.52
82	4.23	3.98	3.96	3.55	3.00	2.54
83	4.25	3.99	3.98	3.57	3.01	2.54
84	4.27	4.00	3.98	3.59	3.02	2.55
85	4.28	4.02	4.00	3.60	3.03	2.57
86	4.29	4.04	4.01	3.61	3.05	2.59
87	4.31	4.04	4.03	3.63	3.06	2.61
88	4.33	4.05	4.04	3.65	3.07	2.62
89	4.34	4.07	4.04	3.66	3.08	2.62
90	4.36	4.09	4.06	3.66	3.10	2.64

**2007 - 2009 Prima Facie Credit Accident and Sickness Rates
Single Premium Rates per \$100 of Initial Insured Indebtedness
Repayable in Equal Monthly Installments**

<i>Benefit Period (Months)</i>	<u>7 Day Coverages</u>		<u>14 Day Coverages</u>		<u>30 Day Coverages</u>	
	<u>Retroactive</u>	<u>Non-Retroactive</u>	<u>Retroactive</u>	<u>Non-Retroactive</u>	<u>Retroactive</u>	<u>Non-Retroactive</u>
91	4.37	4.09	4.08	3.68	3.10	2.65
92	4.39	4.10	4.09	3.70	3.11	2.67
93	4.40	4.13	4.09	3.71	3.12	2.68
94	4.41	4.15	4.12	3.72	3.13	2.68
95	4.42	4.17	4.14	3.74	3.14	2.70
96	4.43	4.18	4.15	3.75	3.17	2.71
97	4.44	4.19	4.17	3.77	3.18	2.72
98	4.46	4.20	4.18	3.78	3.19	2.72
99	4.47	4.22	4.19	3.80	3.20	2.73
100	4.50	4.23	4.20	3.80	3.21	2.74
101	4.50	4.23	4.21	3.82	3.22	2.77
102	4.51	4.25	4.23	3.84	3.23	2.78
103	4.53	4.27	4.23	3.84	3.24	2.80
104	4.55	4.28	4.24	3.85	3.26	2.81
105	4.56	4.29	4.26	3.87	3.27	2.81
106	4.57	4.31	4.28	3.89	3.28	2.82
107	4.58	4.32	4.29	3.89	3.29	2.84
108	4.60	4.34	4.29	3.90	3.30	2.85
109	4.60	4.36	4.31	3.93	3.30	2.86
110	4.61	4.37	4.33	3.94	3.31	2.88
111	4.62	4.38	4.34	3.96	3.32	2.88
112	4.63	4.39	4.36	3.97	3.33	2.90
113	4.65	4.40	4.37	3.98	3.35	2.91
114	4.66	4.41	4.38	3.99	3.36	2.91
115	4.69	4.42	4.39	4.00	3.38	2.92
116	4.70	4.42	4.40	4.02	3.39	2.93
117	4.70	4.44	4.41	4.03	3.40	2.94
118	4.71	4.46	4.42	4.04	3.41	2.95
119	4.73	4.47	4.42	4.04	3.41	2.97
120	4.74	4.50	4.44	4.06	3.42	2.99

General Notices/Errata

AT RICHMOND, JULY 18, 2006

COMMONWEALTH OF VIRGINIA ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2006-00003

Ex Parte: In the matter of considering
§ 1252 of the Energy Policy Act of 2005

FINAL ORDER

On February 6, 2006, the State Corporation Commission ("Commission") established a proceeding to consider for implementation in the Commonwealth the new federal standard under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq. ("PURPA"), that, if adopted, would require utilities to offer time-of-use rates and attendant "smart metering" capability to each of its customer classes. Such standard was enacted by the U.S. Congress in § 1252 of the Energy Policy Act of 2005, P.L. 109-58, 119 Stat. 594 (the "Energy Policy Act"). As noted in the Order Establishing Proceeding, § 111(a) of PURPA requires each state regulatory authority, with respect to each electric utility for which it has ratemaking authority, to consider certain federal standards for electric utilities established by PURPA. Each such state regulatory authority is required to determine whether or not it is appropriate, to the extent consistent with otherwise applicable state law, to implement these standards.¹

Section 1252(a) of the Energy Policy Act amends § 111(d) of PURPA, 16 U.S.C. 2621(d), by adding the following standard for consideration:

(14) TIME-BASED METERING AND COMMUNICATIONS –

(A) Not later than 18 months after the date of enactment of [this standard], each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others -

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer.

Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

(E) In a [s]tate that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

(F) [E]ach [s]tate regulatory authority shall not later than 18 months after the date of enactment of this [standard] conduct an investigation . . . and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).

In the February 6, 2006, Order Establishing Proceeding, the Commission noted that, pursuant to § 1252 (i) of the Energy Policy Act, the Commission is not obligated to consider the time-based metering and communications standard where certain prior state action has occurred. The Commission invited interested persons to comment on the following issues: (1) whether any prior state action has occurred such that the standard or a comparable one has already been implemented or considered in the Commonwealth; (2) whether the Commission has the authority to consider the standard and whether the implementation of such standard would be consistent with otherwise applicable Virginia law; (3) whether electric utilities over which the Commission has ratemaking authority should be required to offer each of its customer classes and to provide customers upon request a time-based rate schedule that will enable the customer to manage energy use and cost through advanced metering and communications technology; (4) whether electric utilities over which the Commission has ratemaking authority should be required to

¹ 16 USC § 2621.

provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate; (5) whether customers buying electricity from third-parties should be entitled to the same time-based metering and communications device and service as a retail electric customer of the electric utility; and (6) if advocating implementing the time-based metering and communications standard, how such standard would best be implemented.

Comments were submitted by Mr. John F. Angle, Mr. Stephen H. Brown, Mr. Alden M. Hathaway, Ms. Debra A. Jacobson, Mr. Michel A. King, Appalachian Power Company, the Demand Response and Advance Metering Coalition, Delmarva Power, Potomac Edison Company, Itron, Inc., the Maryland-District of Columbia-Virginia Solar Energy Industries Association, Virginia Electric and Power Company, and the Virginia Electric Distribution Cooperatives.² The Staff also filed comments summarizing the comments filed by interested persons, responding to certain of those comments, and presenting the Staff's findings and recommendations.

The comments from interested electric customers and others advocating the federal standard generally indicated that time-based metering and communications are appropriate and desirable and, therefore, that the Commission should require the utilities to provide all classes of customers, including those buying electricity from third-party suppliers, with the opportunity to employ time-based metering and be on time-based rate schedules. Such comments also advocated the ability to both time-of-use meter and net-meter, which is currently prohibited by the Regulations Governing Net Energy Metering Rules, 20 VAC 5-315-10 et seq.

The investor owned utilities indicated that they already offer time-of-use metering and rates to certain classes of customers and that customers may request an interval meter. These utilities also noted that those who purchase electricity from third parties are entitled to the same time-based metering and communications devices as retail utility customers. Several of the utilities submitted that there is no real demand for time-based metering options and limited participation in such offerings as are already available. The comments also submitted that the utilities must have flexibility to define and design time-based rate schedules and should be able to recover any costs associated with time-based metering. Further, the comments raised the issue of existing rate caps.

The Cooperatives noted, among other things, that they purchase their power through wholesale supplier contracts that presently offer no time-based pricing and argued that the Cooperatives should be permitted to decide whether to offer time-based metering data and equipment based on the market.

Based on the comments filed, the Staff submitted that the federal time-based metering and communications standard

requiring utilities to offer time-of-use rates and smart metering capability to each of its customer classes should not be implemented at this time. The Staff noted the current tariff offerings by the investor owned utilities and that both utility customers and those who buy from third parties may request a time-based metering and communications device. The Staff noted the circumstances under which the cooperatives purchase electricity. The Staff also indicated, however, that implementation of a program requiring utilities to offer time-based rates and system-wide deployment of smart metering and communications technology should not be completely dismissed pending the expiration of capped rates and the outcome of electric restructuring pursuant to the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"). The Staff submits that such a program may provide customers with protection against more volatile rates and possible increases to customer bills.

NOW THE COMMISSION, upon consideration of the comments filed herein and the applicable law, finds that the federal time-based metering and communications standard established by § 1252 of the Energy Policy Act should not be implemented in the Commonwealth at this time.

The Commission is not convinced that adoption of this standard is, at this juncture, in the public interest. The investor owned utilities already provide certain opportunities for customers to take service pursuant to time-of-use rate schedules. Even without any limitations that the Restructuring Act may impose with respect to requiring utilities to provide time-based rate schedules, we find that utilities or third party service providers should not at present be required to provide each customer class a time-based rate schedule or a time-based meter capable of enabling a customer to receive such rate. There appears to be minimal customer demand for such schedules, even for those that currently exist. Customers may not be capable of or willing to, among other things, vary demand and usage in response to changes in prices based on specific time periods, manage costs by shifting usage to lower cost or off-peak time periods, or reducing consumption. As any competitive market develops, it may be that requiring utilities to offer time-based rates and provide time-based meters and communications to all customers would be appropriate. However, we decline to implement such requirement in the instant proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) This proceeding is hereby closed.
- (2) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

² Collectively, A & N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, and the Virginia, Maryland & Delaware Association of Electric Cooperatives ("Cooperatives").

General Notices/Errata

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 28, 2006. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Forty-Two (06)

Virginia's Instant Game Lottery 741; "Creepy Cash" (effective 7/24/06)

Director's Order Number Forty-Three (06)

Virginia's Instant Game Lottery 744; "Hallo Win" (effective 7/24/06)

Director's Order Number Forty-Four (06)

Virginia's Instant Game Lottery 752; "World Series of Poker \$100,000 Texas Hold'em" (effective 7/24/06)

DEPARTMENT OF ENVIRONMENTAL QUALITY

Announcement of a public meeting on a total maximum daily load (TMDL) study to address the dissolved oxygen impairment in the Occoquan Reservoir

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the first public meeting to introduce the Occoquan Reservoir TMDL study.

Public meeting: Occoquan Reservoir Public Meeting, Thursday, September 7, 2006, 7 p.m. to 9 p.m., Sully District Government Center, James McDonnell Community Room, 4900 Stonecroft Blvd., Chantilly, VA 20151.

Meeting description: This public meeting is the first in a series of meetings to introduce this project to the public. The TMDL study addresses low levels of dissolved oxygen in the Occoquan Reservoir.

Description of study: DEQ and DCR are working together to understand the nature of the dissolved oxygen impairment in the Occoquan Reservoir and to investigate the causes contributing to the low levels of dissolved oxygen. The impaired segment includes all of the Occoquan Reservoir extending from rivermile 20.14 on the Occoquan River, and rivermile 5.18 on Bull Run, downstream to the dam located at rivermile 7.14 on the Occoquan River. The data reveals that the Occoquan Reservoir fully supports the public water supply use and is not impaired as a drinking water source. Excursions from the water quality criteria pertain to the aquatic life use of the reservoir and not the public water supply use. During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired reservoir. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

How to comment: The public comment period for this meeting will extend from September 7, 2006, to October 6, 2006. DEQ accepts written comments by e-mail, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period. A fact sheet on the Occoquan Reservoir impairment is available from the contact below or from the DEQ website at <http://www.deq.virginia.gov/tmdl/homepage.html>.

Contact for additional information Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or e-mail mkconaway@deq.virginia.gov.

* * * * *

Announcement of an Advisory Committee meeting on a total maximum daily load (TMDL) study to address the dissolved oxygen impairment in the Occoquan Reservoir

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the first Technical Advisory Committee meeting to introduce the Occoquan Reservoir TMDL study.

Technical Advisory Committee meeting: Occoquan Reservoir Technical Advisory Committee meeting; Wednesday, August 30, 2006, 10 a.m. to noon, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193.

Meeting description: This Technical Advisory Committee meeting is the first in a series of meetings to introduce this project to the public. The TMDL study addresses low levels of dissolved oxygen in the Occoquan Reservoir.

Description of study: DEQ and DCR are working together to understand the nature of the dissolved oxygen impairment in the Occoquan Reservoir and to investigate the causes contributing to the low levels of dissolved oxygen. The impaired segment includes all of the Occoquan Reservoir extending from rivermile 20.14 on the Occoquan River, and rivermile 5.18 on Bull Run, downstream to the dam located at rivermile 7.14 on the Occoquan River. The data reveals that the Occoquan Reservoir fully supports the public water supply use and is not impaired as a drinking water source. Excursions from the water quality criteria pertain to the aquatic life use of the reservoir and not the public water supply use. During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired reservoir. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

How to comment: The public comment period for this meeting will extend from August 30, 2006, to September 28, 2006. DEQ accepts written comments by e-mail, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period. A fact sheet on the Occoquan Reservoir impairment is available from the contact

below or from the DEQ website at <http://www.deq.virginia.gov/tmdl/homepage.html>.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or e-mail mkconaway@deq.virginia.gov.

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 PHARMACY

Title of Regulation: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy (18 VAC 110-20-20).**

Publication: 22:24 VA.R. 3726-3736 August 7, 2006.

Correction to final regulation:

Page 3727, 18 VAC 110-20-20 F 5 j, column 2, strike "\$115"

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

September 8, 2006 - 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 Accountancy intends to amend regulations entitled **18 VAC 5-21, Board of Accountancy Regulations**. The purpose of the proposed action is to decrease the administration fee charged to Virginia candidates who take the computer-based CPA examination, or "CBT," for the first time from \$160 to \$120, and to repeal entirely the fee charged to Virginia candidates who retake the CBT. The net effect of this is to provide direct savings to Virginia candidates.

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174 or e-mail boa@boa.virginia.gov.

VIRGINIA AGRICULTURAL COUNCIL

August 28, 2006 - 9 a.m. -- Open Meeting
Courtyard by Marriott, 1890 Evelyn Byrd Avenue, Harrisonburg, Virginia.♿

The annual meeting to discuss issues related to research and education projects that are conducted to assist the agricultural industry in the production of agricultural commodities through the Virginia Agricultural Council. The board's summer meeting will be a two-day event, August 28 (board meeting and tour) and August 29 (board tour). The council 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 Donald B. Ayers at least five days before the meeting date so that suitable arrangements can be made.

Contact: Donald Ayers, Executive Director, Virginia Agricultural Council, P.O. Box 1163, Richmond, VA 23218, telephone (804) 779-3742, FAX (804) 779-2581, (800) 828-1120/TTY☎, e-mail don.ayers@vdacs.virginia.gov.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

August 24, 2006 - 2 p.m. -- Open Meeting
Holiday Inn of Harrisonburg, 1400 East Market Street, Harrisonburg, Virginia.♿

A meeting to discuss issues related to Virginia agriculture and consumer services. The board's summer meeting will be a two-day event, August 24 (board meeting) and August 25 (board tour). 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 Roy Seward at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Roy E. Seward, Board Secretary, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail roy.seward@vdacs.virginia.gov.

August 29, 2006 - 9 a.m. -- Public Hearing
Department of Agriculture and Consumer Services, 102 Governor Street, Room 220, Board Room, Richmond, Virginia.

September 11, 2006 - 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 Agriculture and Consumer Services intends to repeal regulations entitled **2 VAC 5-580, Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food**

Stores, and adopt regulations entitled **2 VAC 5-585, Retail Food Establishment Regulations**. The purpose of the proposed action is to adopt the Retail Food Establishment Regulations that by law will replace the existing Rules and Regulations Pertaining to Sanitary and Operating Requirements in Retail Food Stores upon the effective date of the new regulations.

Statutory Authority: § 3.1-398 of the Code of Virginia.

Contact: Richard D. Saunders, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, 102 Governor St., Suite 349, Richmond, VA 23219, telephone (804) 786-8899, FAX (804) 371-7792 or e-mail doug.saunders@vdacs.virginia.gov.


Virginia Cattle Industry Board

† **September 7, 2006 - Noon** -- Open Meeting
† **September 8, 2006 - 8 a.m.** -- Open meeting
Stonewall Jackson Hotel and Conference Center, 24 South Market Street, Staunton, Virginia. 

A regular business meeting to (i) approve minutes from the May 18, 2006, meeting; (ii) review its financial statement and budget; and (iii) receive program updates for the state and national level industry programs from staff. The primary order of business will involve the review of project proposals for the fiscal year, which begins on October 1, 2006. On Thursday, September 7, 2006, breakout committees for Consumer Information, Promotion, and Industry Services will review and select project proposals recommendations for FY 06-07 funding to be made at the Friday, September 8, 2006, board meeting. The primary order of business for the Friday, September 8, 2006, meeting will be the development of a full operating budget for FY 06-07. 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 Bill R. McKinnon at least five days before the meeting date so that suitable arrangements can be made.

Contact: Bill R. McKinnon, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632, e-mail bmckinnon@vacattlemen.org.


Virginia Egg Board

† **August 31, 2006 - 10 a.m.** -- Open Meeting
Mariners Landing Resort and Conference Center, 1217 Graves Harbor Trail, Huddleston, Virginia. 

A meeting to (i) review the financial statements of the Virginia Egg Council; (ii) conduct swearing-in of the newly appointed board; (iii) review the programs of the council, advertising, research and educational projects conducted for the past year FY 2005-2006; (iv) review and discuss the newly submitted budget; and (v) review new programs.

Contact: Ceil Glembocki, Secretary, Virginia Egg Board, 911 Saddleback Court, Mclean, VA 22102-1317, telephone (703) 790-1984, e-mail virginiaegg@cox.net.


Virginia Horse Industry Board

September 22, 2006 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, 2nd Floor Meeting Room, Charlottesville, Virginia. 

A meeting to (i) review the financial status of the board with regard to the fiscal year that just closed, (ii) discuss marketing projects for the new fiscal year, and (iii) hear from several guest speakers. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., Room 318, 3rd Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, e-mail andrea.heid@vdacs.virginia.gov.


Virginia Irish Potato Board

† **August 31, 2006 - 7 p.m.** -- Open Meeting
Eastville Inn Restaurant, 16422 Courthouse Road, Eastville, Virginia. 

A meeting to (i) discuss promotion, research, and education programs; (ii) review and approve the minutes of the last meeting; (iii) review the annual budget; and (iv) discuss preliminary results of programs funded by the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Butch Nottingham at least five days before the meeting date so that suitable arrangements can be made.

Contact: Butch Nottingham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973, e-mail butch.nottingham@vdacs.virginia.gov.

Virginia Marine Products Board

September 26, 2006 - 6 p.m. -- Open Meeting
Ann's Restaurant, Route 17, Glenss, Virginia. 

A meeting to (i) hear the reading and approval of minutes of previous board meeting; and (ii) hear a report on finance, trade shows, industry tours, and cooperative programs with the Virginia Department of Agriculture and Consumer Services. 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 Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Blvd., Suite B, Newport News, VA, telephone (757) 874-3474, FAX (757) 886-0671, e-mail shirley.estes@vdacs.virginia.gov.

Calendar of Events

STATE AIR POLLUTION CONTROL BOARD

August 24, 2006 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street,
1st Floor Conference Room, Richmond, Virginia.

September 8, 2006 - 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 Air Pollution Control Board
intends to amend regulations entitled **9 VAC 5-140,
Regulation for Emissions Trading (Rev. E05)**. The
purpose of the proposed action is to establish requirements
to reduce SO₂ and NO_x emissions in order to eliminate their
significant contribution to nonattainment or interference with
maintenance of the national ambient air quality standards in
downwind states and to protect Virginia's air quality and its
natural resources.

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the
Code of Virginia.

Contact: Mary E. Major, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4423, FAX (804) 698-4510 or e-mail
memajor@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 21, 2006 - 9 a.m. -- Open Meeting
September 5, 2006 - 9 a.m. -- Open Meeting
September 18, 2006 - 9 a.m. -- Open Meeting
October 2, 2006 - 9 a.m. -- Open Meeting
October 16, 2006 - 9 a.m. -- Open Meeting
November 6, 2006 - 9 a.m. -- Open Meeting
† November 20, 2006 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage
Road, Richmond, Virginia. ♿

An executive staff meeting to receive and discuss reports
and activities from staff members and to discuss other
matters not yet determined.

Contact: W. Curtis Coleburn, III, Secretary to the Board,
Department of Alcoholic Beverage Control, 2901 Hermitage
Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX
(804) 213-4411, (804) 213-4687/TTY ♿, e-mail
curtis.coleburn@abc.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

September 7, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the full board to conduct board business. 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 the

meeting so that suitable arrangements can be made. 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 23230-4917, telephone (804) 367-8514,
FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

October 25, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Architects Section to conduct board
business. 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 the meeting so that suitable arrangements
can be made. 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 23230-4917, telephone (804) 367-8514,
FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

October 31, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿


A meeting of the Professional Engineers Section to conduct
board business. 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 the meeting so that suitable arrangements
can be made. 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 23230-4917, telephone (804) 367-8514,
FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

November 2, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿


A meeting of the Landscape Architects Section to conduct
board business. 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 the meeting so that suitable arrangements
can be made. 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 23230-4917, telephone (804) 367-8514,
FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

† **November 8, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Land Surveyors Section to conduct board business. 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 the meeting so that suitable arrangements can be made. 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

† **November 9, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Interior Designers Section to conduct board business. 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 the meeting so that suitable arrangements can be made. 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

ART AND ARCHITECTURAL REVIEW BOARD


September 1, 2006 - 10 a.m. -- Open Meeting

October 6, 2006 - 10 a.m. -- Open Meeting


November 3, 2006 - 10 a.m. -- Open Meeting

Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS Forms Center at www.dgs.virginia.gov. Request form #DGS-30-905 or submittal instructions #DGS-30-906. The deadline for submitting project datasheets and other required information is two weeks prior to the meeting date.

Contact: Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0359, (804) 786-6152/TTY , or e-mail rford@comarchs.com.


VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

November 1, 2006 - 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. 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 the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

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) 367-2475, (804) 367-9753/TTY , e-mail alhi@dpor.virginia.gov.

AUCTIONEERS BOARD

October 5, 2006 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. 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 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: Marian H. Brooks, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail auctioneers@dpor.virginia.gov.

VIRGINIA AVIATION BOARD

August 23, 2006 - 1:30 p.m. -- Open Meeting

August 24, 2006 - 9 a.m. -- Open Meeting

August 25, 2006 - 9 a.m. -- Open Meeting


Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia. 

The 33rd Virginia Annual Aviation Conference.


Contact: Carolyn Toth, Administrative Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3626, FAX (804) 236-3635, e-mail carolyn.toth@doav.virginia.gov.

Calendar of Events

BOARD FOR BARBERS AND COSMETOLOGY


November 6, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A general business meeting to include 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 interpretive 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 barbercosmo@dpor.virginia.gov.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED


Rehabilitation Council for the Blind

September 16, 2006 - 10 a.m. -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A quarterly meeting 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. Public comment will be entertained at the end of the meeting.


Contact: Susan D. Payne, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail susan.payne@dbvi.virginia.gov.

BOARD FOR BRANCH PILOTS


November 1, 2006 - 8:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. 

A meeting of the Examination Administrators to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. 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 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.virginia.gov.

November 1, 2006 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. 


A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. 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 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.virginia.gov.


CEMETERY BOARD

October 17, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A meeting to discuss board business.

Contact: Christine Martine, Executive Director, Cemetery Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail cemetery@dpor.virginia.gov.

CHARITABLE GAMING BOARD

September 12, 2006 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street,
Richmond, Virginia. 

A regular board meeting.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dcg.virginia.gov.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

NOTE: CHANGE IN MEETING DATE

September 26, 2006 - 10 a.m. -- Open Meeting
Location to be announced.

A regular meeting to review local programs.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

October 31, 2006 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor
Conference Room, Richmond, Virginia.

A regular meeting of the Northern Area Review Committee
to review local programs.

Contact: David C. Dowling, Policy, Planning, and Budget
Director, Department of Conservation and Recreation, 203
Governor St., Suite 302, Richmond, VA 23219, telephone
(804) 786-2291, FAX (804) 786-6141, e-mail
david.dowling@dcr.virginia.gov.

October 31, 2006 - 2 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor
Conference Room, Richmond, Virginia.

A regular meeting of the Southern Area Review Committee
to review local programs.

Contact: David C. Dowling, Policy, Planning, and Budget
Director, Department of Conservation and Recreation, 203
Governor St., Suite 302, Richmond, VA 23219, telephone
(804) 786-2291, FAX (804) 786-6141, e-mail
david.dowling@dcr.virginia.gov.

CHILD DAY-CARE COUNCIL

† **October 20, 2006** - 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 Child Day-Care Council intends to
amend regulations entitled **22 VAC 15-10, Public
Participation Guidelines**. The purpose of the proposed
action is to make editorial changes throughout the
regulation to improve clarity. 22 VAC 15-10-40 will be
amended to reflect the provisions of Chapter 241 of the
2002 Acts of Assembly that changed the provisions for a
person to petition the council to take a rulemaking action. 22
VAC 15-10-50 will be amended to reflect the statutory
changes of Chapter 717 of the 1995 Acts of Assembly that
make publication of proposed regulations in a newspaper of
general circulation discretionary rather than mandatory.

Statutory Authority: §§ 2.2-4007 and 63.2-1735 of the Code of
Virginia.

Contact: Richard Martin, Manager, Office of Legislative and
Regulatory Affairs, Department of Social Services, 7 N. 8th
St., Richmond, VA 23219, telephone (804) 726-7902, FAX
(804) 726-7906 or e-mail richard.martin@dss.virginia.gov.

STATE CHILD FATALITY REVIEW TEAM

September 12, 2006 - 10 a.m. -- Open Meeting
† **November 17, 2006 - 10 a.m.** -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson
Street, Richmond, Virginia. ☎

The business portion of the State Child Fatality Review
Team meeting, from 10 a.m. to 10:30 a.m., is open to the
public. At the conclusion of the open meeting, the team will
go into closed session for confidential case review.

Contact: Rae Hunter-Havens, Coordinator, State Child
Fatality Review, 400 E. Jackson St., Richmond, VA 23219,
telephone (804) 786-1047, FAX (804) 371-8595, toll-free (800)
447-1708, e-mail rae.hunter-havens@vdh.virginia.gov.

COMPENSATION BOARD

† **September 20, 2006 - 11 a.m.** -- Open Meeting
102 Governor Street, Lower Level, Rm LL22, Richmond,
Virginia. ☎

A monthly board meeting.

Contact: Cindy Waddell, Compensation Board, P.O. Box
710, Richmond, VA 23218, telephone (804) 225-3308, FAX
(804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

August 21, 2006 - 9 a.m. -- Open Meeting

October 3, 2006 - 9 a.m. -- Open Meeting
Location to be determined.

A Technical Advisory Committee meeting to assist the
department in considering revisions to the Virginia Soil and
Water Conservation Boards Virginia Stormwater
Management Program (VSMP) Permit Regulations.

Contact: David C. Dowling, Policy, Planning, and Budget
Director, Department of Conservation and Recreation, 203
Governor St., Suite 302, Richmond, VA 23219, telephone
(804) 786-2291, FAX (804) 786-6141, e-mail
david.dowling@dcr.virginia.gov.

† **August 24, 2006 - 1 p.m.** -- Open Meeting
† **September 28, 2006 - 1 p.m.** -- Open Meeting
† **October 26, 2006 - 1 p.m.** -- Open Meeting
VDOT Training Center, Farmville, Virginia.

A meeting of the High Bridge State Park Master Plan
Advisory Committee for continued discussion of the master
plan development.

Contact: Robert S. Munson, Planning Bureau Manager,
Department of Conservation and Recreation, 203 Governor
St., Suite 326, Richmond, VA 23219, telephone (804) 786-
6140, FAX (804) 371-7899, e-mail
robert.munson@dcr.virginia.gov.

August 29, 2006 - 9:30 a.m. -- Open Meeting
Department of Environmental Quality, 4949-A Cox Road, Glen
Allen, Virginia.

A Technical Advisory Subcommittee meeting to assist the
department in considering revisions to Part XIII (Statewide
Fees) of the Virginia Soil and Water Conservation Board's
Virginia Stormwater Management Program (VSMP) Permit
Regulations.

Contact: David C. Dowling, Policy, Planning, and Budget
Director, Department of Conservation and Recreation, 203
Governor St., Suite 302, Richmond, VA 23219, telephone
(804) 786-2291, FAX (804) 786-6141, e-mail
david.dowling@dcr.virginia.gov.

Calendar of Events

August 31, 2006 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Board Room, Charlottesville, Virginia.

A meeting of the Virginia Outdoors Plan Technical Advisory Committee (VOPTAC) to provide information and comments on development of the 2007 Virginia Outdoors Plan.

Contact: John R. Davy, Division Director, Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-1119, FAX (804) 371-7899, e-mail john.davy@dcr.virginia.gov.

September 6, 2006 - 9 a.m. -- Open Meeting

October 11, 2006 - 9 a.m. -- Open Meeting

Location to be determined.

A Technical Advisory Committee meeting to assist the department in considering revisions to the Virginia Soil and Water Conservation Board's Impounding Structure (Dam Safety) Regulations.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

September 14, 2006 - Noon -- Open Meeting

October 12, 2006 - Noon -- Open Meeting

† **November 9, 2006 - Noon** -- Open Meeting

Richmond City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia.

A regular meeting of the Falls of the James Scenic River Advisory Committee to discuss river issues.

Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

† **October 19, 2006 - 7 p.m.** -- Open Meeting

Prince Edward County Courthouse, Board Room, Farmville, Virginia.

A meeting to receive comment from the public regarding the proposed High Bridge State Park Master Plan.

Contact: Robert S. Munson, Planning Bureau Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail robert.munson@dcr.virginia.gov.

Virginia Soil and Water Conservation Board

NOTE: CHANGE IN MEETING DATE

† **September 28, 2006 - 9:30 a.m.** -- Open Meeting

† **November 16, 2006 - 9:30 a.m.** -- Open Meeting

Location to be announced.

A regular board meeting.


Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail david.dowling@dcr.virginia.gov.

BOARD FOR CONTRACTORS


August 22, 2006 - 9 a.m. -- Open Meeting

September 26, 2006 - 9 a.m. -- Open Meeting

October 24, 2006 - 9 a.m. -- Open Meeting


Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A regular meeting to address policy and procedural issues and review and render 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. 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. 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.virginia.gov.

NOTE: CHANGE IN MEETING TIME

August 22, 2006 - 1 p.m. -- Open Meeting

Department of Professional and Occupational Regulations, 3600 West Broad Street, Conference Room 4 West, Richmond, Virginia. 

A quarterly meeting of the Board for Contractors Committee to follow the regular board meeting.


Contact: Kevin Hoelt, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.virginia.gov.

August 22, 2006 - 1:30 p.m. -- Open Meeting


† **August 24, 2006 - 9 a.m.** -- Open Meeting

September 15, 2006 - 9 a.m. -- Open Meeting

† **September 19, 2006 - 9 a.m.** -- Open Meeting


Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

An informal fact-finding conference.

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.virginia.gov.

† **August 24, 2006 - 9 a.m.** -- Open Meeting

† **September 6, 2006 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

LRD Licensing to conduct informal fact-finding conferences.

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.virginia.gov.

BOARD OF CORRECTIONS

September 8, 2006 - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Corrections intends to amend regulations entitled **6 VAC 15-20, Regulations Governing Certification and Inspection**. The purpose of the proposed action is to amend existing certification and inspection standards to update definitions and terminology; redirect authority to set and adjust audit schedules, determine compliance decisions and grant extension; standardize submission of variance requests for local and state correctional facilities; and reduce the time limit for a completed audit to be forwarded to the board.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Contact: Donna Lawrence, Manager, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3499, FAX (804) 674-3587 or e-mail donna.lawrence@vadoc.virginia.gov.

September 19, 2006 - 10 a.m. -- Open Meeting
† November 14, 2006 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia.

A meeting of the Liaison Committee to discuss correctional matters of interest to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

September 19, 2006 - 1 p.m. -- Open Meeting
† November 14, 2006 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Board Room, Richmond, Virginia.

A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and policy/regulation matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

September 20, 2006 - 9:30 a.m. -- Open Meeting
† November 15, 2006 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Room 3054, Richmond, Virginia.

A meeting of the Administration Committee to discuss administrative matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

September 20, 2006 - 10 a.m. -- Open Meeting
† November 15, 2006 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia.

A regular meeting of the full board to review and discuss all matters considered by board committees that require presentation to and action by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail barbara.woodhouse@vadoc.virginia.gov.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

September 13, 2006 - 1 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

September 11, 2006 - 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 Criminal Justice Services intends to amend regulations entitled **6 VAC 20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Institutional Services**. The purpose of the proposed action is to amend the rules, last updated in 1992, to make the standards more compatible with the most efficient way to conduct training. The purpose of the changes is to facilitate training while maintaining the quality of training. The goal is to make training and reporting requirements easier for certified academies to accomplish.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Contact: John Byrd, Assistant Section Chief, Department of Criminal Justice Services, 202 N. 9th St., Richmond, VA 23219, telephone (804) 786-6375, FAX (804) 786-0410 or e-mail john.byrd@dcjs.virginia.gov.

September 13, 2006 - 1 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

September 11, 2006 - 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 Criminal Justice Services intends to amend regulations entitled **6 VAC 20-50. Rules Relating to Compulsory Minimum Training Standards Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service**

Calendar of Events

Officers. The purpose of the proposed action is to amend the regulations to ensure that training and certification of jailors, courtroom and courthouse security officers and process service officers is based on timely data provided by the 2001-2002 job task analysis.


Statutory Authority: § 9.1-102 of the Code of Virginia.

Contact: Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 202 North 9th Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or e-mail judith.kirkendall@dcjs.virginia.gov.

BOARD OF DENTISTRY

† **September 6, 2006 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A new board member orientation meeting. There will not be a public comment period.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

September 8, 2006 - 9 a.m. -- Open Meeting


September 29, 2006 - 9 a.m. -- Open Meeting


October 13, 2006 - 9 a.m. -- Open Meeting

October 27, 2006 - 9 a.m. -- Open Meeting


† **November 17, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting of the Special Conference Committee to hold informal conferences. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 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.virginia.gov.

September 14, 2006 - 9 a.m. -- Open Meeting
Roanoke Hotel and Convention Center, Roanoke, Virginia. 

Formal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail cheri.emma-leigh@dhp.virginia.gov.


September 15, 2006 - 9 a.m. -- Open Meeting
Roanoke Hotel and Convention Center, Roanoke, Virginia. 

A meeting to discuss board business. There will be a 15-minute public comment period at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

† **September 22, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Credentials Committee to hold informal conferences. There will not be a public comment period.


Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

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October 6, 2006 - 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, Board of Dentistry Regulations**. The purpose of the proposed action is to allow the board to accept other evidence of qualification for licensure from an applicant if a transcript of other documentation cannot be produced by a third-party entity from which it is required. It will also require an applicant to submit a current report from the National Practitioner Data Bank, which is produced along with the report that is currently required from the Healthcare Integrity and Protection Data Bank.

Statutory Authority: §§ 54.1-2400 and 54.1-2709 of the Code of Virginia.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

DESIGN BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD


September 21, 2006 - 11 a.m. -- Open Meeting

October 19, 2006 - 11 a.m. -- Open Meeting

† **November 16, 2006 - 11 a.m.** -- Open Meeting

Department of General Services, 202 North Ninth Street, Room 412, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use the design build or construction management type contracts. Contact the Division of Engineering and Buildings to confirm this meeting. Board rules and regulations can be obtained on-line at www.dgs.virginia.gov under DGS Forms, Form #DGS-30-904.

Contact: Rhonda M. Bishton, Administrative Assistant, Division of Engineering and Buildings, Department of General Services, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail rhonda.bishton@dgs.virginia.gov.

BOARD OF EDUCATION

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August 25, 2006 - 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 20-520, Regulations Governing Reduction of State Aid When Length of School Term Below 180 School Days**. The 2004 Virginia General Assembly passed three bills that amended § 22.1-98 of the Code of Virginia and made the changes effective from passage of the bills. The bills were HB 1256 (Van Landingham), SB 452 (Whipple), and HB 575 (Hamilton). HB 1256 and SB 452 clarify the schedule of makeup days and circumstances in which approval may be granted so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations. HB 575 permits the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency. HB 575 and SB 452 have emergency enactment clauses and are effective upon passage. HB 1256 and SB 452 require the Board of Education to promulgate regulations to implement the provisions to be effective within 280 days of enactment. Therefore, the amendments are required by changes to the Code of Virginia.

Statutory Authority: § 22.1-16 of the Code of Virginia.

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 margaret.roberts@doe.virginia.gov.

September 27, 2006 - 9 a.m. -- Open Meeting


October 25, 2006 - 9 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Public comment will be received. 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 who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail margaret.roberts@doe.virginia.gov.

September 27, 2006 - 11 a.m. -- Public Hearing

James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

September 11, 2006 - 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 20-700, Regulations for Conducting Division-Level Academic Reviews**. The purpose of the proposed action is to require division-level academic review in school divisions where findings of school-level academic reviews show that the failure of the schools to reach full accreditation is related to the local school board's failure to meet its responsibilities under the Standards of Quality. The Board of Education promulgated emergency regulations as a result of this requirement that expired February 15, 2006. The proposed regulations, which will replace the emergency regulations, do not deviate substantially from the provisions of the emergency regulations.

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

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 margaret.roberts@doe.virginia.gov.

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September 27, 2006 - 11 a.m. -- Public Hearing

James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

September 11, 2006 - 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 20-710, Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions**. The purpose of the proposed action is to comply with an amendment to § 22.1-25 of the Code of Virginia by the 2004 General Assembly. The amendment directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. Section 22.1-25 of the Code of Virginia stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals and a process for public participation in the process. The proposed regulations also include a section detailing the statutory authority, a definitions section, and additional administration and consolidation process requirements.

Statutory Authority: § 22.1-25 of the Code of Virginia.

Calendar of Events

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 margaret.roberts@doe.virginia.gov.

SECRETARY OF EDUCATION

† **September 6, 2006 - 10 a.m.** -- Open Meeting

† **October 4, 2006 - 10 a.m.** -- Open Meeting

† **November 15, 2006 - 10 a.m.** -- Open Meeting

Capital One West Creek Campus, Town Center Building, Richmond, Virginia.

A full council meeting of the Start Strong Pre-K Council.

Contact: Kendall Tyree, Special Assistant to the Secretary of Education, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 692-2550, e-mail kendall.tyree@governor.virginia.gov.

LOCAL EMERGENCY PLANNING COMMITTEE

† **November 6, 2006 - 3 p.m.** -- Open Meeting

Timbrook Public Safety Center, 231 East Piccadilly Street, Winchester, Virginia.

A regular meeting.

Contact: L.A. Miller, Fire and Rescue Chief, Local Emergency Planning Committee, Winchester Fire and Rescue Department, 231 E. Piccadilly St., Winchester, VA 22601, telephone (540) 662-2298, FAX (540) 542-1318, (540) 662-4131/TTY ☎.

DEPARTMENT OF ENVIRONMENTAL QUALITY

August 23, 2006 - 7 p.m. -- Public Hearing

Chesterfield Central Library, 9501 Lori Road, Chesterfield, Virginia. ♿

A public hearing to receive comment on a proposed modification to the permit for the Qualla Road Construction, Demolition and Debris Landfill located in Chesterfield County. The permit modification will allow the installation of an alternate final cover system for the landfill. The facility stopped receiving waste in December 2004. Postclosure care and monitoring activities will continue for at least 10 years.

Contact: John P. Godfrey, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5028, FAX (804) 527-5106, e-mail jgodfrey@deq.virginia.gov.

† **August 30, 2006 - 10 a.m.** -- Open Meeting

Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia. ♿

A meeting of a technical advisory committee assisting in the development of a TMDL to address dissolved oxygen impairments in the Occoquan Reservoir. The public notice of the TMDL development appears in the Virginia Register of Regulations on August 21, 2006. A public meeting has

been scheduled for September 7, 2006 (See 8/21 Register for details).

Contact: Katie Conaway, Department of Environmental Quality, 13901 Crown Court Woodbridge, VA 22193, telephone (703) 583-3804, e-mail mkconaway@deq.virginia.gov.

† **September 7, 2006 - 7 p.m.** -- Open Meeting

Sully District Government Center, 4900 Stonecroft Boulevard, James McDonnell Community Room, Chantilly, Virginia. ♿

The first public meeting on the development of a TMDL to address dissolved oxygen impairments in the Occoquan Reservoir. The public notice appears in the Virginia Register of Regulations on August 21, 2006. The public comment period begins on September 7, 2006, and ends on October 6, 2006.

Contact: Katie Conway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, e-mail mkconaway@deq.virginia.gov.

September 19, 2006 - 9 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Ground Water Protection Steering Committee.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.virginia.gov.

FORENSIC SCIENCE BOARD

October 10, 2006 - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Forensic Science intends to adopt regulations entitled **6 VAC 40-10, Public Participation Guidelines**. The purpose of the proposed action is to facilitate participation by the public in the formation of regulations that are being promulgated to carry out the legislative mandates of the Department of Forensic Science as required by § 2.2-4007 D of the Code of Virginia.

Statutory Authority: §§ 2.2-4007 and 9.1-1110 of the Code of Virginia.

Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail katya.herndon@dfs.virginia.gov.

BOARD OF FORESTRY


† **September 11, 2006 - 9 a.m.** -- Open Meeting

Department of Forestry Central Office, 900 Natural Resources Drive, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)


An orientation and official business meeting.

Contact: Donna S. Hoy, Administrative Staff Specialist, Board of Forestry, 900 Natural Resources Dr., Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, e-mail donna.hoy@dof.virginia.gov.

BOARD FOR GEOLOGY

October 18, 2006 - 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. Person desiring to participate in the meeting and requiring special accommodations or interpretive 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: David E. Dick, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail geology@dpor.virginia.gov.

OFFICE OF GOVERNOR

Community Integration Implementation Team

† **August 22, 2006 - 1 p.m.** -- Open Meeting
† **October 17, 2006 - 1 p.m.** -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Julie A. Stanley, Director, Community Integration for People with Disabilities, Office of Governor, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 371-0828, FAX (804) 786-6984, e-mail julie.stanley@governor.virginia.gov.

STATE BOARD OF HEALTH

† **October 11, 2006 - 3 p.m.** -- Public Hearing
Department of Health, Madison Building, 109 Governor Street, 5th Floor Conference Room, Richmond, Virginia.

October 20, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider adopting regulations entitled **12 VAC 5-125, Regulations for Bedding and Upholstered Furniture Inspection Program**. The purpose of the proposed action is to ensure that only safe and healthy bedding and upholstered furniture products are being sold in the Commonwealth, that uniformity with other state bedding

programs be maintained, and that the Code of Virginia be enforced.

Statutory Authority: §§ 32.1-224 and 59.1-200 of the Code of Virginia.

Contact: Gary L. Hagy, Director, Division of Food and Environmental Services, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475 or e-mail gary.hagy@vdh.virginia.gov.

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† **October 23, 2006** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to repeal regulations entitled **12 VAC 5-70, Regulations Governing the Newborn Screening and Treatment Program**, and adopt regulations entitled **12 VAC 5-71, Regulations Governing Virginia Newborn Screening Services**. The purpose of the proposed action is to expand newborn screening services as required by Chapter 721 of the 2005 Acts of Assembly.


Statutory Authority: § 32.1-12 and Article 7 (§ 32.1-65 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia.

Public comments may be submitted until October 23, 2006.

Contact: Nancy Ford, Division of Child and Adolescent Health, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864 7691, FAX (804) 864 7647, or e-mail nancy.ford@vdh.virginia.gov.


DEPARTMENT OF HEALTH

August 23, 2006 - 1 p.m. -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Glen Allen, Virginia. 

September 13, 2006 - 1 p.m. -- Open Meeting
Medical Society of Virginia, 2924 Emerywood Parkway, Suite 300, Richmond, Virginia. 

A meeting of the SMFP Advisory Committee to address issues concerning the proposed State Medical Facilities Plan.

Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 232330, telephone (804) 367-2157, FAX (804) 367-2149, e-mail carrie.eddy@vdh.virginia.gov.

† **September 6, 2006 - 9 a.m.** -- Open Meeting
Department of Health, Lobby Conference Room, 1st Floor, Richmond, Virginia. 

A meeting of the Health Workforce Advisory Committee to advise on all aspects of VDH health workforce duties and responsibilities.

Contact: Karen Reed, Health Workforce and Minority Health Manager, Department of Health, 109 Governor St., Suite 1016

Calendar of Events

E., Richmond, VA 23219, telephone (804) 864-7427, FAX (804) 864-7440, toll-free (804) 694-7349, e-mail karen.reed@vdh.virginia.gov.

September 8, 2006 - 10 a.m. -- Open Meeting
Children's Hospital, 2924 Brook Road, Richmond, Virginia. ♿

A meeting of the Virginia Early Hearing Detection and Intervention Program Advisory Committee to assist the Department of Health in the implementation of the Virginia Early Hearing Detection and Intervention Program. The advisory committee meets four times a year. Public comment will not be received.

Contact: Pat T. Dewey, Program Manager, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7713, FAX (804) 864-7721, toll-free (866) 493-1090, e-mail pat.dewey@vdh.virginia.gov.

September 9, 2006 - 9 a.m. -- Open Meeting

September 14, 2006 - 9 a.m. -- Open Meeting
109 Governor Street, 5th Floor Conference Room, Richmond, Virginia. Will also be scheduled in remote locations via video conference.

A meeting of the Authorized Onsite Soil Evaluator Regulations Advisory Committee to make recommendations to the commissioner regarding AOSE/PE policies, procedures and programs.

Contact: Dwayne Roadcap, Program Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7462, FAX (804) 864-7476, e-mail dwayne.roadcap@vdh.virginia.gov.

September 22, 2006 - 10 a.m. -- Open Meeting
Department of Health, 109 Governor Street, 5th Floor Conference Room, Richmond, Virginia.

A meeting of the Sewage Handling and Disposal Regulations Advisory Committee to make recommendations to the commissioner regarding sewage handling and disposal policies, procedures and programs of the department.

Contact: Donald Alexander, Division Director, DOSWS, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7452, FAX (804) 864-7476, e-mail donald.alexander@vdh.virginia.gov.

September 27, 2006 - 1:30 p.m. -- Open Meeting
Madison Building, 109 Governor Street, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting of the Newborn Screen Regulations Advisory Group to allow and invite public participation in the development of proposed regulations.

Contact: Nancy Ford, Pediatric Screening and Genetic Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7691, FAX (804) 864-7721, e-mail nancy.ford@vdh.virginia.gov.

October 3, 2006 - 10 a.m. -- Open Meeting
Division of Consolidated Laboratory Services, 600 North 5th Street, Training Room T-23, Richmond, Virginia. ♿

A meeting of the Genetics Advisory Committee to advise the Department of Health on coordinating access to clinical genetics services across the Commonwealth and assuring the provision of genetic awareness and quality services and education for consumers and providers taking into consideration issues of confidentiality, privacy and consent.

Contact: Nancy Ford, Director, Pediatric Screening and Genetic Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7691, e-mail nancy.ford@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

August 29, 2006 - 2 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 4, Richmond, Virginia. ♿

A meeting of the Practitioner Self-Referral Committee to review staff draft recommendations for advisory opinions and make final recommendations to the full board on September 19, 2006. This is a public meeting; however, public comment will not be received.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7691, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail elizabeth.carter@dhp.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS

† November 15, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, 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. Person desiring to participate in the meeting and requiring special accommodations or interpretive 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 Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.virginia.gov.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA


September 12, 2006 - 12:30 p.m. -- Open Meeting
101 North 14th Street, Richmond, Virginia.

Committee meetings begin at 8:30 a.m. Agenda materials will be available on the website approximately one week prior to the meeting at www.schev.edu. A public comment

period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail leeanrung@schev.edu.


BOARD OF HOUSING AND COMMUNITY DEVELOPMENT


September 13, 2006 - 9 a.m. -- Public Hearing
Department of Housing and Community Development, 501 North Second Street, 1st Floor Board Room, Richmond, Virginia. 

October 6, 2006 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to repeal regulations entitled **13 VAC 5-111, Enterprise Zone Regulations**, and adopt regulations entitled **13 VAC 5-112, Enterprise Zone Grant Program Regulations**. The purpose of the proposed action is to establish the processes and procedures for the new Real Property Investment Grants and the new Job Creation Grants and to establish new enterprise zone administration processes and procedures.

Statutory Authority: § 59.1-540 of the Code of Virginia.

Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St. Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY , e-mail steve.calhoun@dhcd.virginia.gov.

† **September 26, 2006 - 10 a.m.** -- Open Meeting
The Jackson Center, 501 North 2nd Street, 1st Floor Boardroom, Richmond, Virginia. 

A regular business meeting.

Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY , e-mail steve.calhoun@dhcd.virginia.gov.


VIRGINIA COUNCIL ON HUMAN RESOURCES

September 21, 2006 - 9:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, PDS 4, Richmond, Virginia.

A quarterly meeting.

Contact: Charles Reed, Associate Director, Department of Human Resource Management, James Monroe Bldg., 101 N. 14th St., 13th Floor, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-2505, e-mail charles.reed@dhrm.virginia.gov.


VIRGINIA INFORMATION TECHNOLOGIES AGENCY

† **August 30, 2006 - 9 a.m.** -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Mobile Workforce Workgroup.

Contact: Mike Hammel, Enterprise Architect, Virginia Information Technologies Agency, 110 S. 7th St., Richmond, VA 23219, telephone (804) 225-4016, e-mail mike.hammel@vita.virginia.gov.


Wireless E-911 Services Board

September 13, 2006 - 10 a.m. -- Open Meeting
† **November 8, 2006 - 10 a.m.** -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia. 

A regular board meeting.


Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 411 E. Franklin St., 5th Floor, Suite 500, Richmond, VA 23219, telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.

JAMESTOWN-YORKTOWN FOUNDATION

September 6, 2006 - 2 p.m. -- Open Meeting
Richmond, Virginia. (call for specific location)  (Interpreter for the deaf provided upon request)


A regular meeting of the Executive Committee of the Jamestown 2007 Steering Committee.

Contact: Judith Leonard, Administrative Office Manager, Jamestown-Yorktown Foundation, 410 W. Francis St., Williamsburg, VA 23185, telephone (757) 253-4253, FAX (757) 253-4950, e-mail judith.leonard@jyf.virginia.gov.

October 19, 2006 - Noon -- Open Meeting
Richmond, Virginia. (call for specific location)  (Interpreter for the deaf provided upon request)

A regular meeting of the Jamestown 2007 Steering Committee.

Contact: Judith Leonard, Administrative Office Manager, Jamestown-Yorktown Foundation, 410 W. Francis St., Williamsburg, VA 23185, telephone (757) 253-4253, FAX (757) 253-4950, e-mail judith.leonard@jyf.virginia.gov.

† **November 20, 2006 - 10 a.m.** -- Open Meeting
† **November 21, 2006 - 8 a.m.** -- Open Meeting
Crowne Plaza Fort Magruder, 6945 Pocahontas Trail, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

Calendar of Events

The semiannual two-day Board of Trustees meeting. Public comment will be received on the second day of the meeting. Contact the Foundation for a schedule.

Contact: Laura W. Bailey, Executive Assistant to the Boards, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4840, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-7236/TTY☎, e-mail laura.bailey@jyf.virginia.gov.

STATE BOARD OF JUVENILE JUSTICE

September 13, 2006 - 9 a.m. -- Open Meeting
Virginia Wilderness Institute, Grundy, Virginia.

† **November 8, 2006 - 9 a.m.** -- Open Meeting
Shenandoah Valley Juvenile Detention Home, 300 Technology Drive, Staunton, Virginia.

Meeting details will be provided closer to the meeting date.

Contact: Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

September 21, 2006 - 10 a.m. -- Open Meeting
Confederate Hills Recreation Building, 302 Lee Avenue, Highland Springs, Virginia.♿

A regular business meeting.

Contact: Beverley Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY☎, e-mail bgd@doli.state.va.us.

LATINO ADVISORY BOARD

† **August 22, 2006 - 5:30 p.m.** -- Open Meeting
Christopher Newport University, 1 University Drive, Ferguson Art Center, Newport News, Virginia.♿

Latino business leaders are invited to present to the VLAB Business Committee their concerns and recommendations on a variety of business issues.

Contact: Sindy Benavides, Deputy Director of Constituent Services and Latino Liaison, Latino Advisory Board, 202 N. Ninth St., Suite 114, Richmond, VA 23219, telephone (804) 225-4836, e-mail sindy.benavides@governor.virginia.gov.

LIBRARY BOARD

September 18, 2006 - 10:30 a.m. -- Open Meeting

† **November 13, 2006 - 9 a.m.** -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia.♿

A meeting to discuss matters pertaining to the Library of Virginia and the Library Board.

Contact: Jean H. Taylor, Executive Secretary Senior, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3525, FAX (804) 692-3594, (804) 692-3976/TTY☎, e-mail jtaylor@lva.lib.va.us.

COMMISSION ON LOCAL GOVERNMENT

September 12, 2006 - 10 a.m. -- Open Meeting

September 22, 2006 - 10 a.m. -- Open meeting
The Jackson Center, 501 North 2nd Street, Richmond, Virginia.♿

A regular business meeting.

Contact: Ted McCormack, Commission on Local Government, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, e-mail ted.mccormack@dhcd.virginia.gov.

BOARD OF LONG-TERM CARE ADMINISTRATORS

September 12, 2006 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.♿

September 22, 2006 - 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 Long-Term Care Administrators intends to amend regulations entitled **18 VAC 95-30, Regulations Governing the Practice of Assisted Living Facility Administrators**. The purpose of the proposed action is to set the fees and requirements for licensure as assisted living facility administrators.

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

Public comments may be submitted until September 22, 2006, to Sandra Reen, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY☎, e-mail sandra.reen@dhp.virginia.gov.

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

NOTE: CHANGE IN MEETING DATE

October 30, 2006 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.♿

A meeting to discuss general business matters. There will be a 15-minute public comment period at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-

7457, FAX (804) 662-9943, (804) 662-7197/TTY☎, e-mail sandra.reen@dhp.virginia.gov.

VIRGINIA MANUFACTURED HOUSING BOARD

† **September 21, 2006 - 10 a.m.** -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, 1st Floor Boardroom Richmond, Virginia.♿

A regular meeting to carry out duties under the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis McIver, State Building Code Administrator, Virginia Manufactured Housing Board, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7161, FAX (804) 371-7092, (804) 371-7089/TTY☎, e-mail curtis.mciver@dhcd.virginia.gov.

MARINE RESOURCES COMMISSION

August 22, 2006 - 9:30 a.m. -- Open Meeting
September 26, 2006 - 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) 247-2215, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY☎, e-mail jane.mccroskey@mrc.virginia.gov.

BOARD OF MEDICAL ASSISTANCE SERVICES

September 12, 2006 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia.♿

A quarterly meeting.

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

† **August 29, 2006 - 9 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 7th Floor, Conference Room, Richmond, Virginia.♿

A meeting of the Medicaid Revitalization Committee to discuss Employer Sponsored Health Insurance Options/Public Insurance Buy-In, including the Family Opportunity Act (optional provision of the DRA). A presentation of a summary of committee deliberations to date will also occur.

Contact: Bonnie Scott, Director's Office, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8437, FAX (804) 786-1680, (800) 343-0634/TTY☎, e-mail bonnie.scott@dmas.virginia.gov.

† **September 7, 2006 - 9 a.m.** -- Open Meeting
† **September 26, 2006 - 9:30 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 7th Floor, Conference Room, Richmond, Virginia.♿

A meeting to provide an overview of Medicaid-funded acute and long-term care services in Virginia and across the United States.

Contact: Adrienne T. 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 altc@dmas.virginia.gov.

† **September 14, 2006 - 1 p.m.** -- Open Meeting
Capital One, 15075 Capital One Drive, West Creek Town Center, Room C-1, Richmond, Virginia.♿

A CHIPAC quarterly meeting. Public comment will be received at the end of the meeting.

Contact: Diane Howard, FAMIS Marketing and Outreach Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3359, FAX (804) 786-5799, e-mail diane.howard@dmas.virginia.gov.

† **September 21, 2006 - 9 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 7th Floor Conference Room, Richmond, Virginia.♿

A meeting of the Medicaid Revitalization Committee to present a draft committee report.

Contact: Bonnie Scott, Director's Office, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8437, FAX (804) 786-1680, (800) 343-0634/TTY☎, e-mail bonnie.scott@dmas.virginia.gov.

September 22, 2006 - 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 amend regulations entitled **12 VAC 30-50, Amount, Duration and Scope of Medical and Remedial Care Services**, and **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to (i) provide clarity and guidance to providers and other stakeholders; (ii) conform to the IFDDS waiver renewal application as approved by CMS in February of 2004; (iii) comply with Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and Department of Social Services (DSS) provider licensing

Calendar of Events

standards; (iv) follow recommendations made by the office of the Attorney General; and (v) support individual choice.

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

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail teja.stokes@dmas.virginia.gov.

September 22, 2006 - 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 amend regulations entitled **12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to place a ceiling on specialized care ancillary service reimbursement to nursing facilities providing services to Medicaid.

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


Contact: Diane Hankins, Provider Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-5379, FAX (804) 786-1680 or e-mail diane.hankins@dmas.virginia.gov.

September 22, 2006 - 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 amend regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to develop new regulations containing the policy and procedures for the Day Support Waiver in consultation with members of the General Assembly and in collaboration with DMHMRSAS and the MR Waiver Advisory Committee. This waiver covers only those individuals who have a diagnosis of mental retardation. Day support services include training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home.


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

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail teja.stokes@dmas.virginia.gov.


† October 18, 2006 - 9:30 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 7th Floor, Conference Room, Richmond, Virginia. 

A meeting to hear public comment on the integration of acute and long-term care. Written comments may be sent throughout the process to altc@dmas.virginia.gov.

Contact: Adrienne T. 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 altc@dmas.virginia.gov.

October 18, 2006 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. 

A meeting of the Medicaid Transportation Advisory Committee to discuss Medicaid transportation issues with the committee and the community.

Contact: Bob Knox, Transportation Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854, FAX (804) 786-6035, (800) 343-0634/TTY , e-mail robert.knox@dmas.virginia.gov.

† October 20, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled **12 VAC 30-30, Groups Covered and Agencies Responsible for Eligibility Determination; 12 VAC 30-40, Eligibility Conditions and Requirements; and 12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**. The purpose of the proposed action is to implement the Medicare Prescription Part D Drug Program.

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

Public comments may be submitted until October 20, 2006.

Contact: Jack Quigley, Policy & Research Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680 or e-mail jack.quigley@dmas.virginia.gov.

† October 20, 2006 - 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 Medical Assistance Services intends to amend regulations entitled **12 VAC 30-70, Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care**. The purpose of the proposed action is to permit DMAS to make DSH payments in conformity with changing federal legislation.

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

Public comments may be submitted until October 20, 2006.

Contact: William Lessard, Provider Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or e-mail william.lessard@dmas.virginia.gov.

† **October 20, 2006** - 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 amend regulations entitled **12 VAC 30-150, Uninsured Medical Catastrophe Fund**. The purpose of the proposed action is to update the UMGF program to make it more user friendly.


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


Public comments may be submitted until October 20, 2006.

Contact: Patricia Taylor, Program Operations Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-6333, FAX (804) 786-1680 or e-mail patricia.taylor@dmas.virginia.gov.


October 23, 2006 - 9 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia. 

A meeting of the Pharmacy and Therapeutics Committee to review PDL Phase I and new drugs in PDL Phase II.


Contact: Katina Goodwyn, Pharmacy Contract Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, (800) 343-0634/TTY , e-mail katina.goodwyn@dmas.virginia.gov.


November 9, 2006 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. 


A meeting of the Drug Utilization Review Committee to discuss Medicaid pharmacy issues as related to this committee.


Contact: Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, (800) 343-0634/TTY , e-mail katina.goodwyn@dmas.virginia.gov.

BOARD OF MEDICINE


August 24, 2006 - 9:30 a.m. -- Open Meeting
Holiday Inn, 3315 Ordway Drive, Roanoke, Virginia. 


September 7, 2006 - 9:30 a.m. -- Open Meeting
Courtyard Marriott, 3301 Ordway Drive, Roanoke, Virginia. 

† **September 13, 2006 - 8:45 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


† **September 19, 2006 - 9 a.m.** -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. 


A special conference committee will convene informal conferences to inquire into allegations that certain practitioners of medicine or other healing arts may have violated certain laws and regulations governing the practice of medicine. Further, the committee may review cases with board staff for case disposition, including consideration of consent orders for settlement. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Renee S. Dixon, Discipline Case Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail renee.dixon@dhp.virginia.gov.


September 22, 2006 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room, Richmond, Virginia. 


A meeting of the Legislative Committee to consider regulatory matters as presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 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.virginia.gov.


September 22, 2006 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A meeting of the Ad Hoc Committee on Continuing Competency to discuss the available data on this topic and consider directions for the board in the future. Public comment will be received on agenda items at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 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.virginia.gov.


October 19, 2006 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.


Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 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.virginia.gov.

Calendar of Events


Advisory Board on Acupuncture

October 4, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of acupuncture. Public comment on agenda items 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.virginia.gov.


Advisory Board on Athletic Training

October 5, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of athletic training. Public comment on agenda items 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.virginia.gov.


Advisory Board on Midwifery

October 6, 2006 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of midwifery. Public comment on agenda items 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.virginia.gov.


Advisory Board on Occupational Therapy

October 3, 2006 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of occupational therapy. Public comment on agenda items 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.virginia.gov.


Advisory Board on Physician Assistants

October 5, 2006 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of physician assistants. Public comment on agenda items 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.virginia.gov.


Advisory Board on Radiologic Technology

October 4, 2006 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 


A meeting to consider issues related to the regulations of radiologic technologists and radiologic technologist-limited. Public comment on agenda items 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.virginia.gov.

Advisory Board on Respiratory Care

October 3, 2006 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 

A meeting to consider issues related to the regulations of respiratory care. Public comment on agenda items 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.virginia.gov.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 22, 2006 - 10 a.m. -- Public Hearing
Jefferson Building, 1220 Bank Street, 8th Floor Conference
Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2007. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 10th Floor and at each community services board office. Comments may be made at the hearing or in writing by no

later than August 22, 2006, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact William T. Ferris, LCSW. Copies of the oral presentations should be filed at the time of the hearing.

Contact: William T. Ferris, LCSW, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Mental Health, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-4837, FAX (804) 371-0091, (804) 371-8977/TTY ☎

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† **September 19, 2006 - 2 p.m.** -- Public Hearing
Henrico Area Mental Health and Retardation Services, 10299 Woodman Road, Conference Room, Glen Allen, Virginia.

† **October 3, 2006 - 10 a.m.** -- Public Hearing
Mount Rogers Community Services Board, 770 West Ridge Road, Wytheville, Virginia.

October 23, 2006 - 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 Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations entitled **12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services**. The purpose of the proposed action is to add standards for new providers of services for the treatment of opioid addiction.

Statutory Authority: § 37.2-203 and Chapter 7 of the 2005 Acts of Assembly.

Public comments may be submitted until October 23, 2006.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail leslie.anderson@co.dmhmrzas.virginia.gov.

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† **October 23, 2006** - 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 Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations entitled **12 VAC 35-45, Regulations for Providers for Mental Health, Mental Retardation and Substance Abuse Residential Services for Children**. The purpose of the proposed action is to add provisions for issuing an order of summary suspension of the license to operate a group home or residential facility for children. In addition to any other comments, the department on behalf of the board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory

proposal. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs; (ii) probable effect of the regulation on affected small businesses; and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to the contact person named below. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Statutory Authority: §§ 37.2-203, 37.2-408 and 37.2-418 of the Code of Virginia.

Public comments may be submitted until October 23, 2006.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail leslie.anderson@co.dmhmrzas.virginia.gov.

* * * * *

† **October 23, 2006** - 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 Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations entitled **12 VAC 35-45, Regulations for Providers for Mental Health, Mental Retardation Substance Abuse, and Brain Injury Residential Services for Children**. The purpose of the proposed action is to add provisions for licensing providers of brain injury services.

Statutory Authority: § 37.2-203 and Chapter 725 of the 2005 Acts of Assembly.

Public comments may be submitted until October 23, 2006.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail leslie.anderson@co.dmhmrzas.virginia.gov.

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† **October 23, 2006** - 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 Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations entitled **12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services**. The purpose of the proposed action is to add provisions for licensing providers of brain injury services. In addition to any other comments, the department on behalf of the board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory

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proposal. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs; (ii) probable effect of the regulation on affected small businesses; and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to the contact person named below. Written comments must include the name and address of the commenter. In order to be considered comments will be received by the last date of the public comment period.

Statutory Authority: § 37.2-203 and Chapter 725 of the 2005 Acts of Assembly.

Public comments may be submitted until October 23, 2006.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail leslie.anderson@co.dmhmsas.virginia.gov.

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† **October 23, 2006** - 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 Mental Health, Mental Retardation and Substance Abuse Services intends to adopt regulations entitled **12 VAC 35-210, Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities**. The purpose of the proposed action is to promulgate a new regulation to govern practices related to trial or home visits from state mental health and state mental retardation facilities under § 37.2-837 B of the Code of Virginia.

Statutory Authority: §§ 37.2-203 and 37.2-837 of the Code of Virginia.

Public comments may be submitted until October 23, 2006.

Contact: Marion Greenfield, Office of Quality Management, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-4516, FAX (804) 786-8623 or e-mail marion.greenfield@co.dmhmsas.virginia.gov.


STATE MILK COMMISSION

September 13, 2006 - 10:45 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 2054, Charlottesville, Virginia. 


A regular meeting to consider industry issues, distributor licensing, base transfers and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify Edward C. Wilson at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 102 Governor St., Room 205, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail edward.wilson@vdacs.virginia.gov.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† **September 6, 2006 - 3 p.m.** -- Open Meeting
Powell River Project Pavilion, Norton, Virginia. 

A semiannual meeting of the Abandoned Mined Land Advisory Committee to review current and outstanding issues of the Abandoned Mine Land (AML) Program and Rural Abandoned Mine Land Program (RAMP). The Division of Mined Land Reclamation receives advice from the committee membership regarding ongoing reclamation of AML through technical information sharing, collaboration, mission oversight and support.

Contact: Roger L. 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.

DEPARTMENT OF MOTOR VEHICLES

August 30, 2006 - 11 a.m. -- Public Hearing
Washington County Public Library, 205 Oak Hill Street, Abingdon, Virginia.

August 31, 2006 - 11 a.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Roanoke, Virginia.

September 12, 2006 - 11 a.m. -- Public Hearing
Virginia Beach Library, Central, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia.

September 14, 2006 - 11 a.m. -- Public Hearing
DMV Headquarters Building, 2300 West Broad Street, Richmond, Virginia.

September 19, 2006 - 11 a.m. -- Public Hearing
VDOT Staunton District Office, 3536 North Valley Pike, Harrisonburg, Virginia.

September 21, 2006 - 11 a.m. -- Public Hearing
West Springfield Government Center, 6140 Rolling Road, Springfield, Virginia.

October 6, 2006 - 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 Motor Vehicles intends to repeal regulations entitled **24 VAC 20-120, Commercial Driver Training School Regulations**, and adopt regulations entitled **24 VAC 20-121, Virginia Driver Training School Regulations**. The purpose of the proposed action is to ensure that graduates of commercial vehicle and passenger vehicle driver training schools licensed by DMV are adequately prepared to safely and independently operate motor vehicles on the public roadways. The overall goals to are to (i) strengthen DMV

training school standards and develop additional standards to ensure that the instruction provided is uniform and meets all established requirements; (ii) strengthen DMV's oversight process to ensure that reviews of training documentation are consistent, evaluation of school curriculums are expanded, and school audits are more comprehensive and less burdensome on driver training course providers; and (iii) implement additional changes intended to ensure that consistently high quality instruction is provided across the driver training school system and that the learning environment for younger students is safe, secure and peer-oriented.

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Contact: Marc Copeland, Senior Policy Analyst, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875, FAX (804) 367-6631, toll-free 1-866-368-5463 or e-mail marc.copeland@dmv.virginia.gov.

MOTOR VEHICLE DEALER BOARD

† **September 11, 2006 - 8:30 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


Committees will meet as follows:

Dealer Practices Committee - 8:30 a.m.
Licensing Committee - Immediately following Dealer Practices
Advertising Committee - 9:30 a.m. or immediately after Licensing, whichever is later
Transaction Recovery Fund Committee - Immediately following Advertising
Franchise Law Committee - To be scheduled as needed.
Full board meeting - 10 a.m. or five to 45 minutes following Transaction Recovery Fund


NOTE: Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.


Contact: Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvdv.virginia.gov.

VIRGINIA MUSEUM OF FINE ARTS


September 12, 2006 - 8 a.m. -- Open Meeting
October 3, 2006 - 8 a.m. -- Open Meeting
November 7, 2006 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, The Pauley Center, 200 North Boulevard, Dining 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, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

September 20, 2006 - 9 a.m. -- Open Meeting
Virginia Museum of Fine Arts, The Pauley Center, 200 North Boulevard, Parlor, Richmond, Virginia. 

A meeting for staff to update the Expansion Committee in closed session. Public comment will not be received.


Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, toll-free (800) 943-8632, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


September 20, 2006 - 11:15 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard, Library, Richmond, Virginia. 

The following committees will meet for staff updates:


11:15 a.m. - Art Acquisitions - Library
1 p.m. - Artistic Oversight - CEO Parlor
3:30 p.m. - Government Affairs - Pauley Center 2


Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.


September 21, 2006 - 9 a.m. -- Open Meeting
Virginia Museum of Fine Arts, Pauley Center, 2, 200 North Boulevard, Richmond, Virginia. 

A meeting of the Fiscal Oversight Committee for staff to update the committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

September 21, 2006 - Noon -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard, CEO Parlor, Richmond, Virginia. 

A meeting for staff to update the board. Part 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, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

Calendar of Events

VIRGINIA COMMISSION FOR NATIONAL AND COMMUNITY SERVICE

Governor's Commission on Community and National Service

† **September 21, 2006 - 10 a.m.** -- Open Meeting
Department of Social Services, 7 North 8th Street, Richmond, Virginia.

A regular business meeting of the board.

Contact: Susan Patton, Virginia Commission for National and Community Service, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7065, FAX (804) 726-7024, toll-free (800) 638-3839, (804) 828-1120/TTY , e-mail susan.c.patton@dss.virginia.gov.

VIRGINIA MUSEUM OF NATURAL HISTORY

† **August 26, 2006 - 10 a.m.** -- Open Meeting
Quality Inn/Dutch Inn, 2360 Virginia Avenue, Collinsville, Virginia.

A meeting to include reports from all standing board committees.

Contact: Cindy Gray, Director's Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY , e-mail cgray@vmnh.net.

FOUNDATION FOR VIRGINIA'S NATURAL RESOURCES

October 11, 2006 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A business meeting of the Board of Trustees.

Contact: Brenda Taylor, Administrative Staff Specialist, Foundation for Virginia's Natural Resources, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, e-mail brenda.taylor@dof.virginia.gov.

BOARD OF NURSING

September 18, 2006 - 9 a.m. -- Open Meeting
September 20, 2006 - 9 a.m. -- Open Meeting
September 21, 2006 - 9 a.m. -- Open Meeting
† **November 13, 2006 - 9 a.m.** -- Open Meeting
† **November 15, 2006 - 9 a.m.** -- Open Meeting
† **November 16, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A panel of the board will conduct formal hearings 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.virginia.gov.

September 19, 2006 - 9 a.m. -- Open Meeting
† **November 14, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A meeting to conduct general business including receipt of committee reports and consideration of regulatory action and discipline 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.virginia.gov.

September 19, 2006 - 11:30 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A public hearing to receive comment on proposed amendments to regulations for certified nurse aides.

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.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

August 23, 2006 - 9 a.m. -- CANCELED
October 18, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A regular meeting.

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.virginia.gov.

OLD DOMINION UNIVERSITY

† **August 25, 2006 - Noon** -- Open Meeting
† **October 16, 2006 - Noon** -- Open Meeting
† **November 20, 2006 - Noon** -- Open Meeting
Old Dominion University, Webb University Center, Old Norfolk, Virginia.

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president. Public comment will not be received by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old

Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

† **September 22, 2006 - 1:30 p.m.** -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. ♿

A regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president. Public comment will not be received by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

VIRGINIA OUTDOORS FOUNDATION

September 20, 2006 - 1 p.m. -- Open Meeting

September 21, 2006 - 9 a.m. -- Open Meeting

† **November 15, 2006 - 1 p.m.** -- Open Meeting

† **November 16, 2006 - 9 a.m.** -- Open Meeting

Location to be announced; Charlottesville, Virginia area.

A meeting for policy and easement consideration. Public comment will be received.

Contact: Trisha Cleary, Administrative Assistant, Department of Conservation and Recreation, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2147, FAX (804) 371-4810, e-mail tcleary@vofonline.org.

BOARD OF PHARMACY

August 25, 2006 - 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 will eliminate the requirement of an alarm system for alternative sites for delivery of dispensed prescriptions provided the prescriptions are held in a locked room or device with access limited to the practitioner or responsible party listed on an application for controlled substance registration or his designee.

Statutory Authority: Chapters 33 and 34 of Title 54.1 of the Code of Virginia.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or e-mail elizabeth.russell@dhp.virginia.gov.

† **August 31, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Special Conference Committee to discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, Virginia 23230, telephone (804) 662-9911, FAX (804) 662-9313.

September 27, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A meeting to consider such regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ☎, e-mail scotti.russell@dhp.virginia.gov.

October 7, 2006 - Public comments may be submitted until 5 p.m. on 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 add the Internet-based TOEFL examination in lieu of the current TOEFL and TSE as an alternative for graduates in foreign schools of pharmacies.

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

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313 or e-mail scotti.russell@dhp.virginia.gov.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 21, 2006 - 10 a.m. -- CANCELED


October 26, 2006 - 11 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to conduct board business. 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. Person desiring to participate in the meeting and requiring special accommodations or interpretive 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: Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-0674, (804) 367-9753/TTY ☎, e-mail kevin.hoeft@dpor.virginia.gov.

Calendar of Events


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September 21, 2006 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 


October 6, 2006 - Public comment 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 Professional and Occupational Regulation intends to amend regulations entitled **18 VAC 120-30, Regulations Governing Polygraph Examiners**. The purpose of the proposed action is to amend current regulations to reflect statutory changes, industry changes, and changes suggested by licensees and the public.

Statutory Authority: § 54.1-1802 of the Code of Virginia.

Contact: Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-0674, (804) 367-9753/TTY , e-mail kevin.hoeft@dpor.virginia.gov.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† **November 13, 2006 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor Conference Room,
Richmond, Virginia. 


A quarterly meeting.

Contact: Mark Courtney, Executive Director, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, e-mail mark.courtney@dpor.virginia.gov.


BOARD OF PSYCHOLOGY

October 10, 2006 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 


A meeting to include reports from standing committees and any regulatory and disciplinary 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 Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

September 28, 2006 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100,
Richmond, Virginia. 

A quarterly meeting.

Contact: Janet Dingle Brown, Esq., Public Guardianship Coordinator and Legal Services Developer, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail janet.brown@vda.virginia.gov.

VIRGINIA RACING COMMISSION

† **October 20, 2006** - 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 Virginia Racing Commission intends to amend regulations entitled **11 VAC 10-70, Regulations Pertaining to Horse Racing With Pari-Mutuel Wagering-Stewards**. The purpose of the proposed action is to clarify the authority of the stewards appointed by the Virginia Racing Commission to enforce and interpret the commission's regulations. The definition of "participant" has been added, which provides that certain individuals associated with a horse that is entered to run in Virginia shall be considered as participants and come under the jurisdiction of the commission. Additionally, the amendments authorize the commission to take disciplinary actions through stewards or at a meeting at which a quorum is present. These amendments are made to conform with the regulation changes that were made to the Code of Virginia on July 1, 2005, as provided for in SB 1270.

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


Public comments may be submitted until 5 p.m. on October 20, 2006.

Contact: David S. Lermond, Jr., Regulatory Coordinator, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail david.lermond@vrc.virginia.gov.


REAL ESTATE APPRAISER BOARD

† **August 24, 2006 - 9 a.m.** -- Open Meeting

† **August 30, 2006 - 10 a.m.** -- Open Meeting


Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Room 453, Richmond,
Virginia. 

Informal fact-finding conferences.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , e-mail reboard@dpor.virginia.gov.

August 29, 2006 - 10 a.m. -- Open Meeting

November 7, 2006 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, 4 West Conference Room,
Richmond, Virginia. 

A meeting to discuss board business.

Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reappraisers@dpor.virginia.gov.

REAL ESTATE BOARD

† **August 24, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Room 453, Richmond,
Virginia. ♿

Informal fact-finding conferences.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

September 13, 2006 - 3 p.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Education Committee.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

September 14, 2006 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Fair Housing Committee.

Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reboard@dpor.virginia.gov.

September 14, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to discuss board business.

Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reappraisers@dpor.virginia.gov.

DEPARTMENT OF REHABILITATIVE SERVICES

† **October 10, 2006 - 9:30 a.m.** -- Open Meeting
Department of Rehabilitative Service, 8004 Franklin Farms
Drive, Richmond, Virginia. ♿

Meetings of the ESOAC/LTESS Steering Committee to discuss rehabilitation issues that impact employment service organizations in providing employment services and long-term follow-along funding to consumers.

Contact: Tim Olive, Program Administrative Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23229, telephone (804)

662-7127, FAX (804) 662-9140, toll-free (800) 552-5019, (804) 662-9040/TTY ☎, e-mail tim.olive@drs.virginia.gov.

† **October 27, 2006 - 1 p.m.** -- Open Meeting
Department of Rehabilitative Service, 8004 Franklin Farms
Drive, Richmond, Virginia. ♿

A quarterly meeting of the Virginia Brain Injury Council. Public comments will be received at approximately 1:15 p.m.

Contact: Kristie Chamberlain, BI/SCI Services Unit, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (800) 464-9950/TTY ☎, e-mail kristie.chamberlain@drs.virginia.gov.

Commonwealth Neurotrauma Initiative (CNI) Trust Fund Research Colloquium II

† **September 21, 2006 - 10 a.m.** -- Open Meeting
North Run Corporate Center, Community College Workforce
Alliance, J. Sargeant Reynolds Conference Center-
Auditorium, 1630 East Parham Road, Richmond, Virginia. ♿

Research grantees will report to the board and each other on CNI funded research on the mechanisms and treatment of Neurotrauma. An interpreter for the deaf will be provided upon prior request. Materials will be provided in alternate format upon request.

Contact: Kristie Chamberlain, BI/SCI Services Unit, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (800) 464-9950/TTY ☎, e-mail kristie.chamberlain@drs.virginia.gov.

† **September 22, 2006 - 9 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms
Drive, Conference 101, Richmond, Virginia. ♿

A quarterly meeting. Agendas and other materials available in alternate format upon request. Public comments will be received at approximately 9:15 a.m.

Contact: Kristie Chamberlain, BI/SCI Services Unit, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (800) 464-9950/TTY ☎, e-mail kristie.chamberlain@drs.virginia.gov.

VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

September 19, 2006 - 1 p.m. -- Open Meeting
University of Virginia Research Park, Charlottesville, Virginia.


† **November 14, 2006 - 11 a.m.** -- Open Meeting
Williamsburg, Virginia.


A quarterly meeting.


Calendar of Events

Contact: Nancy Vorona, VP Research Investment, Virginia Research and Technology Advisory Commission, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3043, FAX (703) 464-1720, e-mail nvorona@cit.org.

STATE BOARD OF SOCIAL SERVICES

September 7, 2006 - 6 p.m. -- Public Hearing
Fredericksburg Christian School, 9400 Thornton Rolling Road, Fredericksburg, Virginia. 


September 11, 2006 - 6 p.m. -- Public Hearing
Williamsburg Library Theatre, 515 Scotland Street, Williamsburg, Virginia. 


September 13, 2006 - 6 p.m. -- Public Hearing
Hidden Valley High School, 5000 Titan Trail, Roanoke, Virginia. 


October 6, 2006 - 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 repeal regulations entitled **22 VAC 40-71, Standards and Regulations for Licensed Assisted Living Facilities**. The purpose of the proposed action is to promulgate a comprehensive revision of the assisted living facility standards and replace an emergency regulation. The proposed action includes additional requirements for care and services to residents; staff qualifications, training and responsibilities; management of the facility, physical plant features; coordination with mental health systems; disclosure of information; and emergency preparedness.

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

Contact: Judith McGreal, Program Development Consultant, Department of Social Services, 7 N. 8th St. Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, (800) 828-1120/TTY , e-mail judith.mcgreal@dss.virginia.gov.

September 7, 2006 - 6 p.m. -- Public Hearing
Fredericksburg Christian School, 9400 Thornton Rolling Road, Fredericksburg, Virginia. 

September 11, 2006 - 6 p.m. -- Public Hearing
Williamsburg Library Theatre, 515 Scotland Street, Williamsburg, Virginia. 


September 13, 2006 - 6 p.m. -- Public Hearing
Hidden Valley High School, 5000 Titan Trail, Roanoke, Virginia. 


October 6, 2006 - 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 40-72, Standards for Licensed Assisted Living Facilities**. The purpose of the proposed action is to promulgate a


comprehensive revision of the assisted living facility standards and replace an emergency regulation. The proposed action includes additional requirements for care and services to residents; staff qualifications, training and responsibilities; management of the facility, physical plant features; coordination with mental health systems; disclosure of information; and emergency preparedness.

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

Contact: Judith McGreal, Program Development Consultant, Department of Social Services, 7 N. 8th St. Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, (800) 828-1120/TTY , e-mail judith.mcgreal@dss.virginia.gov.

September 7, 2006 - 6 p.m. -- Public Hearing
Fredericksburg Christian School, 9400 Thornton Rolling Road, Fredericksburg, Virginia. 

September 11, 2006 - 6 p.m. -- Public Hearing
Williamsburg Library Theatre, 515 Scotland Street, Williamsburg, Virginia. 


September 13, 2006 - 6 p.m. -- Public Hearing
Hidden Valley High School, 5000 Titan Trail, Roanoke, Virginia. 

October 6, 2006 - 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 conform the regulation with legislative changes to the provisions for terms of license, administrative sanctions, and hearings procedures.

Public comment can also be submitted at the Department of Social Services website at <http://www.dss.state.va.us>. Persons wishing to speak at public hearings may begin registering at 5:30 p.m.

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

Contact: Kathryn Thomas, Program Development Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132, (800) 828-1120/TTY , e-mail kathryn.thomas@dss.virginia.gov.

September 8, 2006 - 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 repeal regulations entitled **22 VAC 40-330, Collection of Overpayments in the Refugee Other Assistance Program**. The purpose of the proposed action

is to repeal the regulation as the regulation applies to a program that no longer exists under federal law.

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

Contact: Penelope Boyd, Policy Coordinator, Virginia Refugee Resettlement Program, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7933, FAX (804) 726-7127 or e-mail penny.boyd@dss.virginia.gov.

September 8, 2006 - 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 repeal regulations entitled **22 VAC 40-340, Protective Payments in the Refugee Other Assistance Program**. The purpose of the proposed action is to repeal the regulation as the regulation applies to a program that no longer exists under federal law.


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

Contact: Penelope Boyd, Policy Coordinator, Virginia Refugee Resettlement Program, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7933, FAX (804) 726-7127 or e-mail penny.boyd@dss.virginia.gov.


BOARD OF SOCIAL WORK

October 13, 2006 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Fifth Floor, Richmond, Virginia. 

A regular business meeting.


Contact: Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.

BOARD FOR SOIL SCIENTISTS AND WETLAND PROFESSIONALS

October 11, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting of the Soil Scientists and Wetland Delineators Board to conduct board business. 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 the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600

W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail soilscientist@dpor.virginia.gov.

DEPARTMENT OF TAXATION


State Land Evaluation Advisory Council

September 11, 2006 - 11 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. 

A meeting to adopt suggested ranges of value for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, e-mail keith.mawyer@tax.virginia.gov.

TREASURY BOARD


September 20, 2006 - 9 a.m. -- Open Meeting
October 18, 2006 - 9 a.m. -- Open Meeting
† November 15, 2006 - 9 a.m. -- Open Meeting
101 North 14th Street, 3rd Floor, Richmond, Virginia. 

A regular meeting.

Contact: J. Braxton Powell, Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23218, telephone (225) 225-2142, FAX (225) 225-3187, e-mail braxton.powell@trs.virginia.gov.

DEPARTMENT OF VETERANS SERVICES


Board of Veterans Services

September 18, 2006 - 11:30 a.m. -- Open Meeting
Virginia War Memorial, 621 South Belvidere, Richmond, Virginia. 

Public comment limited to three minutes per speaker.

Contact: Rhonda Earman, Special Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0286, e-mail rhonda.earman@dvs.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

August 22, 2006 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the advisory committee assisting the department in the development of proposed amendments (Amendment No. 5) to the Solid Waste Management Regulations (9 VAC 20-80).


Contact: Allen Brockman, Virginia Waste Management Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-

Calendar of Events

4468, FAX (804) 698-4327, e-mail
arbrockman@deq.virginia.gov.

Richmond, VA 23229, telephone (804) 662-7249, FAX (804)
662-7359, e-mail dpryor@idc.virginia.gov.


STATE WATER CONTROL BOARD

October 4, 2006 - 9:30 a.m. -- Open Meeting
Department of Environmental Quality Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia. 


A meeting of the advisory committee assisting in the
development of the regulation for wastewater reclamation
and reuse.

Contact: Valerie Rourke, State Water Control Board, P.O.
Box 10009, Richmond, VA 23240, telephone (804) 698-4158,
e-mail varourke@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS


September 13, 2006 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open
to the public; however, a portion of the board's business
may be conducted 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. The department fully
complies with the Americans with Disabilities Act.

Contact: David E. Dick, Executive 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.virginia.gov.


INDEPENDENT

VIRGINIA INDIGENT DEFENSE COMMISSION

† September 8, 2006 - 11 a.m. -- Open Meeting
Virginia Indigent Defense Commission, 1604 Santa Rosa
Road, Suite 109, Richmond, Virginia. 

A meeting of the Executive Committee.


Contact: Danita Pryor, Office Manager, Virginia Indigent
Defense Commission, 1604 Santa Rosa Rd., Suite 109,
Richmond, VA 23229, telephone (804) 662-7249, FAX (804)
662-7359, e-mail dpryor@idc.virginia.gov.

† September 8, 2006 - Noon -- Open Meeting
Virginia Indigent Defense Commission, 1604 Santa Rosa
Road, Suite 109, Richmond, Virginia. 

A meeting of the full commission.

Contact: Danita Pryor, Office Manager, Virginia Indigent
Defense Commission, 1604 Santa Rosa Rd., Suite 109,

STATE LOTTERY BOARD

† September 13, 2006 - 9:30 a.m. -- Open Meeting
State Lottery Department, 900 East Main Street, 13th Floor,
Richmond, Virginia. 

A regular meeting. There will be an opportunity for public
comment shortly after the meeting is convened.

Contact: Frank S. Ferguson, Director, Legislative and
Regulatory Affairs, State Lottery Department, 900 E. Main St.,
Richmond, VA 23219, telephone (804) 692-7901, FAX (804)
692-7905, e-mail fferguson@valottery.state.va.us.

* * * * *

† October 20, 2006 - Public comments may be submitted until
this date.


Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Lottery Board intends to
amend regulations entitled **11 VAC 5-20, Administration
Regulations**. The purpose of the proposed action is to
require the department to follow the procedures contained
in Virginia Lottery Purchasing Manual when purchasing
goods or services.

Statutory Authority: Section 58.1-4007 of the Code of Virginia.

Contact: Betty K. Hill, Legislative & Regulatory Coordinator,
State Lottery Department, 900 E. Main St., Richmond, VA
23219, telephone (804) 692-7904, FAX (804-692-7603) or e-
mail bhill@valottery.com.

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

Disabilities Advisory Council

September 13, 2006 - 10 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building,
1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter
for the deaf provided upon request)

A regular meeting of the Disabilities Advisory Council. This
meeting is open to the public. Public comment is welcomed
by the council and will be received beginning at 10 a.m.
Public comment will also be accepted by telephone. Public
comment will be received beginning at 10 a.m. Public
comment will also be accepted by telephone. If you wish to
provide public comment via telephone, you must call Lisa
Shehi, Administrative Assistant at 1-800-552-3962
(Voice/TTY) or via e-mail at lisa.shehi@vopa.virginia.gov no
later than August 30, 2006. Ms. Shehi will take your name
and phone number and you will be telephoned during the
public comment period. For more information on
participating in this conference call or to provide public
comment via telephone, or arrange for interpreter services
or accommodations call or e-mail Lisa Shehi.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail lisa.shehi@vopa.virginia.gov.

September 25, 2006 - 9 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, VOPA Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Board of Directors. Public comment will be received beginning at 9 a.m. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or via e-mail at lisa.shehi@vopa.virginia.gov no later than September 11, 2006. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. For more information on participating in this conference call or to provide public comment via telephone. If interpreter services or accommodations are required, please contact Ms. Shehi no later than September 11, 2006.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail lisa.shehi@vopa.virginia.gov.

BOARD FOR PROTECTION AND ADVOCACY

September 26, 2006 - 9 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Governing Board. Public comment is welcomed by the board and will be received beginning at 9 a.m. on September 26, 2006. Public comment will also be accepted by telephone. Public comment will be received beginning at 10 a.m. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or via e-mail at lisa.shehi@vopa.virginia.gov no later than September 11, 2006. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than September 12, 2006.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail lisa.shehi@vopa.virginia.gov.

PAIMI Advisory Council

† **November 16, 2006 - 10 a.m.** -- Open Meeting
Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

Public comment is welcome and will be received at the beginning of the meeting. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than November 2, 2006.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 662-7213, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail lisa.shehi@vopa.virginia.gov.

VIRGINIA RETIREMENT SYSTEM

September 12, 2006 - 9 a.m. -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Optional Retirement Plan for Higher Education Committee. No public comment will be received at the meeting.

Contact: Patty Atkins-Smith, Legislative Liaison and Policy Analyst, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3123, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail psmith@varetire.org.

September 13, 2006 - 1:30 p.m. -- Open Meeting
† **November 8, 2006 - 1:30 p.m.** -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia.

Meetings of the following committees:

1:30 p.m. - Benefits and Actuarial

3 p.m. - Audit and Compliance

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@varetire.org.

September 14, 2006 - 9 a.m. -- Open Meeting
† **November 9, 2006 - 9 a.m.** -- Open Meeting
Virginia Retirement System, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Linda Ritchey, Executive Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6673, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lritchey@varetire.org.

September 14, 2006 - 1 p.m. -- Open Meeting
October 12, 2006 - 1 p.m. -- Open Meeting
† **November 9, 2006 - 1 p.m.** -- Open Meeting
Virginia Retirement System, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

Calendar of Events

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@varetire.org.

† **September 14, 2006 - 5:30 p.m.** -- Open Meeting
Jefferson Hotel, 101 West Franklin Street, Richmond, Virginia. ♿

A special meeting. No public comment will be received.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3119, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@varetire.org.

† **September 15, 2006 - 8:30 a.m.** -- Open Meeting
Jefferson Hotel, 101 West Franklin Street, Richmond, Virginia. ♿

A special meeting of the VRS Board of Trustees. No public comment will be received.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3119, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@varetire.org.

October 11, 2006 - 1:30 p.m. -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. ♿

A meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

Contact: LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3124, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@varetire.org.

LEGISLATIVE

JOINT COMMISSION ON ADMINISTRATIVE RULES

October 4, 2006 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, contact Elizabeth Palen, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

Contact: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

HOUSE APPROPRIATIONS

August 28, 2006 - 9:30 a.m. -- Open Meeting
September 18, 2006 - 9:30 a.m. -- Open Meeting
October 16, 2006 - 9:30 a.m. -- Open Meeting
November 13, 2006 - TBA - Open Meeting
November 14, 2006 - TBA - Open Meeting
General Assembly Building, 9th and Broad Streets, 9th Floor, Richmond, Virginia. ♿

A regular meeting.

Contact: Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

VIRGINIA CODE COMMISSION

August 23, 2006 - 10 a.m. -- Open Meeting
October 18, 2006 - 10 a.m. -- Open Meeting
† **November 9, 2006 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

September 20, 2006 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Senate Leadership Room, Richmond, Virginia. ♿

A regularly scheduled meeting.

Contact: Jane D. Chaffin, Registrar of Regulations, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

HOUSE COMMITTEE ON COMMERCE AND LABOR

† **October 3, 2006 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda contact Frank Munyan, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.


SENATE EDUCATION AND HEALTH SPECIAL SUBCOMMITTEE

† **September 12, 2006 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 4th Floor East Conference Room, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, contact Nikki Seeds or Brenda Edwards, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

Contact: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.


JOINT SUBCOMMITTEE STUDYING LONG-TERM FUNDING FOR THE PURCHASE OF DEVELOPMENT RIGHTS TO PRESERVE OPEN-SPACE AND FARMLANDS

August 23, 2006 - 1:30 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda contact Mark Vucci, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.


JOINT SUBCOMMITTEE STUDYING OPEN SPACE FARMLAND PRESERVATION

† **October 10, 2006 - 12:30 p.m.** -- Open Meeting
Barrier Islands Center, Machipongo, Virginia. 

A regular meeting. For questions regarding the meeting agenda contact Mark Vucci, Division of Legislative Services, (804) 786-3591.

Contact: Pam Burham, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

JOINT SUBCOMMITTEE STUDYING OPERATIONS OF CIRCUIT COURT CLERKS' OFFICES

† **August 30, 2006 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, contact Mary Kate Felch, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

Contact: Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.


JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

September 19, 2006 - 10:30 a.m. -- Open Meeting
Insurance Institute for Highway Safety, Vehicle Research Center, 988 Dairy Road, Ruckersville, Virginia.

A meeting of JCOTS Advisory Committee on Traffic Safety and Technology.

Contact: Patrick Cushing, Staff Attorney, Joint Commission on Technology and Science, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail pcushing@leg.state.va.us.

VIRGINIA COMMISSION ON YOUTH

August 24, 2006 - 11 a.m. -- Public Hearing
Roanoke City Council Chambers, 215 Church Avenue, S.W., Roanoke, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to receive public comment on the establishment of an office of the Children's Services Ombudsman in Virginia. To access the hearing notice, visit the commission's website, email mjackson@leg.state.va.us, or call (804) 371-2481.

Contact: Marilyn Jackson, Policy Analyst, Virginia Commission on Youth, General Assembly Building, 910 Capitol St., 517B, Richmond, VA 23219, telephone (804) 371-2481, e-mail mjackson@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 21

Alcoholic Beverage Control Board
Conservation and Recreation, Department of

August 22

Contractors, Board for
† Governor, Office of the
- Community Integration Implementation Team
† Latino Advisory Board
Marine Resources Commission
Waste Management Board, Virginia

August 23

Aviation Board, Virginia
Code Commission, Virginia
Health, Department of
Long-Term Funding for the Purchase of Development Rights to Preserve Open-Space and Farmlands, Joint Subcommittee Studying

August 24

Agriculture and Consumer Services, Board of
Aviation Board, Virginia
† Conservation and Recreation, Department of
† Contractors, Board of
Medicine, Board of
† Real Estate Appraiser Board
† Real Estate Board
Youth, Virginia Commission on

August 25

Aviation Board, Virginia
† Old Dominion University

August 26

† Museum of Natural History, Virginia

August 28

Agricultural Council, Virginia

Calendar of Events

Appropriations, House

August 29

Conservation and Recreation, Department of
Health Professions, Board of
† Medical Assistance Services, Department of
Real Estate Appraiser Board

August 30

† Environmental Quality, Department of
† Information Technologies Agency, Virginia
† Operations of Circuit Court Clerks' Office, Joint
Subcommittee Studying
† Real Estate Appraiser Board

August 31

† Agriculture and Consumer Services, Department of
- Virginia Egg Board
- Irish Potato Board
Conservation and Recreation, Department of
† Pharmacy, Board of

September 1

Art and Architectural Review Board

September 5

Alcoholic Beverage Control Board

September 6

Conservation and Recreation, Department of
† Contractors, Board of
† Dentistry, Board of
† Education, Secretary of
† Health, Department of
Jamestown-Yorktown Foundation
† Mines, Minerals and Energy, Department of

September 7

† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
† Environmental Quality, Department of
† Medical Assistance Services, Department of
Medicine, Board of

September 8

† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
Dentistry, Board of
Health, Department of
† Indigent Defense Commission, Virginia

September 9

Health, Department of

September 11

† Forestry, Board of
† Motor Vehicle Dealer Board
Taxation, Department of
- State Land Evaluation Advisory Council

September 12

Charitable Gaming Board
Child Fatality Review Team, State
† Education and Health Special Subcommittee, Senate
Higher Education for Virginia, State Council of
Local Government, Commission on
Medical Assistance Services, Board of
Museum of Fine Arts, Virginia
Retirement System, Virginia

September 13

Health, Department of
Information Technologies Agency, Virginia
- E911 Wireless Service Board

Juvenile Justice, State Board of

† Lottery Board, State

† Medicine, Board of

Milk Commission, State

Protection and Advocacy, Virginia Office for
- Disabilities Advisory Council

Real Estate Board

Retirement System, Virginia

Waterworks and Wastewater Works Operators, Board for

September 14

Conservation and Recreation, Department of
Dentistry, Board of

Health, Department of

† Medical Assistance Services, Department of
Real Estate Board

† Retirement System, Virginia

September 15

Contractors, Board for

Dentistry, Board of

† Retirement System, Virginia

September 16

Blind and Vision Impaired, Department for the

September 18

Alcoholic Beverage Control Board

Appropriations, House

Library Board

Nursing, Board of

Veterans Services, Department of

- Board of Veterans Services

September 19

† Contractors, Board for

Corrections, Board of

Environmental Quality, Department of

† Medicine, Board of

Nursing, Board of

Research and Technology Advisory Commission, Virginia

Technology and Science, Joint Commission on

September 20

Code Commission, Virginia

† Compensation Board

Corrections, Board of

Museum of Fine Arts, Virginia

Nursing, Board of

Outdoors Foundation, Virginia

Treasury Board

September 21

Design-Build/Construction Management Review Board

Human Resources, Virginia Council on

Labor and Industry, Department of

- Virginia Apprenticeship Council

† Manufactured Housing Board, Virginia

† Medical Assistance Services, Department of

Museum of Fine Arts, Virginia

† National and Community Service, Virginia Commission for

Nursing, Board of

Outdoors Foundation, Virginia

† Rehabilitative Services, Department of

September 22

Agriculture and Consumer Services, Department of

- Virginia Horse Industry Board
† Dentistry, Board of
Health, Department of
Local Government, Commission on
Medicine, Board of
† Old Dominion University
† Rehabilitative Services, Department of

September 25

Protection and Advocacy, Virginia Office for

September 26

Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
Chesapeake Bay Local Assistance Board
Contractors, Board for
† Housing and Community Development, Board of
Marine Resources Commission
† Medical Assistance Services, Department of
Protection and Advocacy, Virginia Office for
- Board for Protection and Advocacy

September 27

Education, Board of
Health, Department of
Pharmacy, Board of

September 28

† Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
Public Guardian and Conservator Advisory Board, Virginia

September 29

Dentistry, Board of

October 2

Alcoholic Beverage Control Board

October 3

† Commerce and Labor, House Committee on
Conservation and Recreation, Department of
Health, Department of
Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care
Museum of Fine Arts, Virginia

October 4

Administrative Rules, Joint Commission on
† Education, Secretary of
Medicine, Board of
- Advisory Board on Acupuncture
- Advisory Board on Radiologic Technology
Water Control Board, State

October 5

Auctioneers Board
Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants

October 6

Art and Architectural Review Board
Medicine, Board of
- Advisory Board on Midwifery

October 10

† Open Space and Farmland Preservation, Joint
Subcommittee Studying
Psychology, Board of
† Rehabilitative Services, Department of

October 11

Conservation and Recreation, Department of

Natural Resources, Foundation for Virginia's
Retirement System, Virginia
Soil Scientists and Wetland Professionals, Board for
Professional

October 12

Conservation and Recreation, Department of
Retirement System, Virginia

October 13

Dentistry, Board of
Social Work, Board of

October 16

Alcoholic Beverage Control Board
Appropriations, House
† Old Dominion University

October 17

Cemetery Board
† Governor, Office of the
- Community Integration Implementation Team

October 18

Code Commission, Virginia
Geology, Board for
† Medical Assistance Services, Department of
Nursing, Board of
- Joint Boards of Nursing and Medicine
Treasury Board

October 19

† Conservation and Recreation, Department of
Design-Build/Construction Management Review Board
Jamestown-Yorktown Steering Committee
Medicine, Board of

October 23

Medical Assistance Services, Department of

October 24

Contractors, Board for

October 25

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Education, Board of

October 26

† Conservation and Recreation, Department of
Polygraph Examiners Advisory Board

October 27

Dentistry, Board of
† Rehabilitation Services, Department of

October 30

Long-Term Care Administrators, Board for

October 31

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Chesapeake Bay Local Assistance Board

November 1

Asbestos, Lead, and Home Inspectors, Board for
Branch Pilots, Board for

November 2

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for

November 3

Art and Architectural Review Board

November 6

Calendar of Events

Alcoholic Beverage Control Board
Barbers and Cosmetology, Board for
† Emergency Planning Committee, Local
- City of Winchester

November 7

Museum of Fine Arts, Virginia
Real Estate Appraiser Board

November 8

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
† Information Technologies Agency, Virginia
- E911 Wireless Service Board
† Juvenile Justice, State Board of
† Retirement System, Virginia

November 9

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
† Code Commission, Virginia
† Conservation and Recreation, Department of
† Medical Assistance Services, Department of
† Retirement System, Virginia

November 13

Appropriations, House
† Library Board
† Nursing, Board of
† Professional and Occupational Regulation, Board for

November 14

Appropriations, House
† Corrections, Board of
† Nursing, Board of
† Research and Technology Advisory Commission, Virginia

November 15

† Corrections, Board of
† Education, Secretary of
† Hearing Aid Specialists, Board for
† Nursing, Board of
† Outdoors Foundation, Virginia
† Treasury Board

November 16

† Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
† Design-Build/Construction Management Review Board
† Nursing, Board of
† Outdoors Foundation, Virginia
† Protection and Advocacy, Virginia Office for
- PAIMI Advisory Council

November 17

† Child Fatality Review Team, State
† Dentistry, Board of

November 20

† Alcoholic Beverage Control Board
† Jamestown-Yorktown Foundation
† Old Dominion University

November 21

† Jamestown-Yorktown Foundation

PUBLIC HEARINGS

August 22

Mental Health, Mental Retardation and Substance Abuse
Services, Department of

August 23

Environmental Quality, Department of

August 24

Air Pollution Control Board, State

August 29

Agriculture and Consumer Services, Board of

August 30

Motor Vehicles, Department of

August 31

Motor Vehicles, Department of

September 7

Social Services, State Board of

September 11

Social Services, State Board of

September 12

Long-Term Care Administrators, Board of
Motor Vehicles, Department of

September 13

Criminal Justice Services, Department of
Housing and Community Development, Department of
Social Services, State Board of

September 14

Motor Vehicles, Department of

September 19

† Mental Health, Mental Retardation and Substance Abuse
Services, State Board of
Motor Vehicles, Department of
Nursing, Board of

September 21

Motor Vehicles, Department of
Polygraph Examiners Advisory Board

September 27

Education, Board of

October 3

† Mental Health, Mental Retardation and Substance Abuse
Services, State Board of

October 11

† Health, Board of