VIRGINIA REGISTER OF REGULATIONS

VOL. 29 ISS. 21 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | JUNE 17, 2013

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $209.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

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

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register*'s Internet home page (http://register.dls.virginia.gov).

June 2013 through June 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Agency Decision

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

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

Name of Petitioner: Tonnyann T. Hurley.

Nature of Petitioner's Request: To allow a minimum of 2,000 documented hours of practice experience after graduation from an approved program to be substituted for passage of a specialty examination if there is no national examination in an area of practice.

Agency's Decision: Request denied.

Statement of Reason for Decision: The board considered all comments on the petition and decided to deny the request for amendments to regulation. The petitioner's proposal is inconsistent with the Consensus Model for Advanced Practice Nursing, which requires specialty certification by examination. The board chose not to depart from nationally recognized standards and adopt a different model for clinical nurse specialists in Virginia.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R13-15; Filed May 21, 2013, 2:12 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-60, Rules and Regulations Governing the Operation of Livestock Markets.** The purpose of the proposed action is to update and enhance requirements concerning animal disease traceability and to ensure that state regulations comply with related federal regulations recently issued by the U.S. Department of Agriculture. The existing regulation will be amended to remove the specific language requiring the brucellosis testing of all cows offered for sale at the livestock markets. The requirements for permanent identification that was associated with that testing will need to remain in the regulation.

This Notice of Intended Regulatory Action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Statutory Authority: § 3.2-6001, 3.2-6002, and 3.2-6004 of the Code of Virginia.

Public Comment Deadline: July 17, 2013.

Agency Contact: Charles Broaddus, DVM, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

VA.R. Doc. No. R13-3709; Filed May 23, 2013, 12:25 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-120, Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle.** The purpose of the proposed action is to update and enhance requirements concerning animal disease traceability and to ensure that state regulations comply with related federal requirements recently issued by the U.S. Department of Agriculture, which require that breeding cattle and certain other livestock moving interstate be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. The proposed amendments remove the specific language associated with brucellosis and set forth guidelines for cattle that need to be identified and recorded. The proposed changes to this regulation will be in concert with those for 2VAC5-60, Rules and Regulations Governing the Operation of Livestock Markets.

This Notice of Intended Regulatory Action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Statutory Authority: §§ 3.2-6001, 3.2-6002, and 3.2-6004 of the Code of Virginia.

Public Comment Deadline: July 17, 2013.

Agency Contact: Charles Broaddus, DVM, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

VA.R. Doc. No. R13-3710; Filed May 23, 2013, 12:26 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Corrections intends to consider amending **6VAC15-40, Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to amend the regulation so that a jail will not be required to perform a tuberculosis (TB) skin test on an inmate entering the facility if it can be documented that the inmate has received a TB skin test within the past 12 months or has tested positive to the TB skin test at any time in the past. In addition, the board will add provisions to certify compliance with Part 115 of Title 28 of the Code of Federal Regulations (National Standards to Prevent, Detect, and Respond to Prison Rape), which requires jails and lockups to comply with these standards as documented through audits conducted by U.S. Department of Justice accredited auditors.

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

Statutory Authority: §§ 53.1-5 and 53.1-68 of the Code of Virgnia.

Public Comment Deadline: July 17, 2013.

Agency Contact: Jim Bruce, Agency Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 887-8215, FAX (804) 674-3017, or email james.bruce@vadoc.virginia.gov.

VA.R. Doc. No. R13-3712; Filed May 17, 2013, 9:04 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending **8VAC20-30, Regulations Governing Adult High School Programs** and repealing **8VAC20-680, Regulations Governing the General Achievement Diploma.** The purpose of the proposed action is to promulgate regulations to implement the provisions of Chapters 454 and 642 of the 2012 Acts of Assembly. The legislation amended § 22.1-253.13:4 of the Code of Virginia to strengthen postsecondary education and workplace readiness opportunities for all students and to consolidate the number of Board of Education-approved diplomas. The legislation eliminated the general achievement diploma by folding it into the adult high school diploma, which would be renamed the general achievement adult high school diploma. The legislation added a requirement that adult students would need to earn a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment in order to be awarded the diploma. The legislation further provided that the general achievement adult high school diploma would include the following requirements:

1. Achievement of a passing score on the GED examination;

2. Successful completion of an education and training program designated by the Board of Education;

3. Achievement of a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment; and

4. Completion of other requirements as may be established by the board.

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

Statutory Authority: §§ 22.1-224 and 22.1-253.13:4 of the Code of Virginia.

Public Comment Deadline: July 17, 2013.

Agency Contact: Anne Wescott, Assistant Superintendent for Policy and Communication, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2403, or email anne.wescott@doe.virginia.gov.

VA.R. Doc. No. R13-3303; Filed May 22, 2013, 2:19 p.m.

TITLE 12. HEALTH

BOARD OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider repealing **12VAC30-120, Waivered Services.** The purpose of the proposed action is to repeal the agency's MEDALLION regulations, which provide for primary care case management (PCCM) as an alternative to managed care. The managed care service delivery mechanism, via managed care organizations, has now expanded throughout the entire Commonwealth and these PCCM regulations are no longer needed.

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

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Comment Deadline: July 18, 2013.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R13-3371; Filed May 22, 2013, 11:12 a.m.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

LIBRARY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Library Board intends to consider promulgating **17VAC15-61, Standards for Recorded Permanent Instruments** and repealing **17VAC15-60, Standards for Plats; 17VAC15-70, Standards for Recorded Instruments;** and **17VAC15-80, Standards for Paper for Permanent Circuit Court Records.** The purpose of the proposed action is to simplify the regulations regarding standards to which all circuit court clerks' offices will compare the medium, inscription, and format of paper instruments presented for recording and filing when such instruments will become records with a disposition of permanent retention. Without a standard, instruments submitted to record may be of such quality that reformatting them to the copy of record, via electronic image or microfilm, for the purpose of producing copies indefinitely, can be

significantly hindered. Currently, the standards are spread out over three regulations; these will be repealed. The language in the planned regulation will be simpler and better organized, and obsolete sections will be removed.

This action is initiated in response to the Governor's Regulatory Reform Initiative.

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

Statutory Authority: § 42.1-82 of the Code of Virginia.

Public Comment Deadline: July 17, 2013.

Agency Contact: Glenn Smith, Records and Information Management Analyst, Library of Virginia, 800 East Broad Street, Richmond, VA 23219, telephone (804) 692-3604, or email glenn.smith@lva.virginia.gov.

VA.R. Doc. No. R13-3761; Filed May 23, 2013, 11:04 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board for Waste Management Facility Operators has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC155-20, Waste Management Facility Operators Regulations**, which was published in 29:13 VA.R. 1688 February 25, 2013. After consideration by the board, it was determined that this regulatory action does not fit with the Governor's Regulatory Reform Initiative.

Agency Contact: Eric L. Olson, Executive Director, Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8511, FAX (866) 430-1033, or email wastemgt@dpor.virginia.gov.

VA.R. Doc. No. R13-3557; Filed May 23, 2013, 2:55 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Proposed Regulation

Titles of Regulations: **1VAC30-40. Regulations for the Certification of Laboratories Analyzing Drinking Water (repealing 1VAC30-40-10 through 1VAC30-40-370).**

1VAC30-41. Regulation for the Certification of Laboratories Analyzing Drinking Water (adding 1VAC30-41-10 through 1VAC30-41-500).

Statutory Authority: §§ 2.2-1102 and 2.2-1105 of the Code of Virginia; 42 USC § 300f et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 16, 2013.

Agency Contact: Rhonda Bishton, Regulatory Coordinator, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

Basis: Under the federal Safe Drinking Water Act (SDWA) (42 USC § 300f et seq.), the U.S. Environmental Protection Agency (EPA) sets national limits on contaminant levels in drinking water to ensure that the water is safe for human consumption. The federal regulations at 40 CFR 142.10(b)(3)(i) require the establishment and maintenance of a state program for the certification of laboratories conducting analytical measurements of drinking water contaminants pursuant to the requirements of the state primary drinking water regulations. To determine compliance under 40 CFR 141.28, EPA requires that the analysis of samples must be made by certified laboratories.

Section 2.2-1102 of the Code of Virginia authorizes the Department of General Services to prescribe regulations necessary or incidental to the performance of the department's duties or execution of powers and establish fee schedules that may be collectible from users when general fund appropriations are not applicable to the services rendered. Section 2.2-1104 of the Code of Virginia authorizes the Division of Consolidated Laboratory Services (DCLS) to establish and conduct programs of inspection and certification of other laboratories in the Commonwealth as mandated by the federal Safe Drinking Water Act and state requirements. Section 2.2-1105 of the Code of Virginia requires DCLS to establish, by regulation, a program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia, the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), or the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). Section 2.2-1105 also requires DCLS to establish, by regulation, a fee system to offset the costs of the certification program.

Purpose: Public health is protected when drinking water laboratories meet established federal standards for analyzing drinking water samples. The SDWA is carried out in Virginia by the Department of Health. 12VAC5-590, Waterworks Regulation, promulgated by the Department of Health sets standards for the maximum permissible level of contaminants in drinking water. 12VAC5-590-340 requires all analyses for the purpose of demonstrating compliance with the primary and secondary maximum contaminant levels or action levels be performed by DCLS or by laboratories certified by DCLS, and 12VAC5-590-440 requires all laboratories that seek certification to perform drinking water analyses to comply with the drinking water laboratory certification regulation promulgated by DCLS. The proposed regulatory action is necessary to ensure that current federal requirements are set out in the drinking water laboratory certification regulation. Maintaining primacy for drinking water in Virginia requires the drinking water laboratory certification regulation to incorporate the most current federal guidance and regulatory requirements.

Substance: The proposed regulation repeals the current regulation, which uses the 1992 edition of the EPA Manual for the certification of drinking water laboratories, and creates a new regulation, which uses the EPA's fifth edition of the Manual (June 2005) and a Supplement to the Manual (June 2008). The latest EPA guidance and agency procedures are set out in the proposed new regulation.

The drinking water laboratories certified under 1VAC30-40 already meet this latest edition of the EPA Manual and the Supplement because of the regulation update provision in 1VAC30-40-80. The changes to the current regulation are numerous, so a new 1VAC30-41 is being proposed. The current 1VAC30-40 will be repealed when 1VAC30-41 becomes effective. The revisions made to 1VAC30-40, effective on February 3, 2010, are included in the proposed new regulation, 1VAC30-41.

The proposed regulatory action revises the fee provisions to allow DCLS to charge fees to public as well as private laboratories to cover the cost of the certification program. The fees currently charged to the laboratories certified under the regulation do not cover the cost of the program.

The following are the substantive changes to the current regulation. The references are to the proposed chapter, 1VAC30-41:

1. References to outdated versions of the EPA Manual are removed. The most recent version of the EPA Manual and the Supplement to the Manual are listed in 1VAC30-41-50, and these documents are incorporated by reference.

2. The provisions in current Part III (1VAC30-40-200 et seq.) through Part V (1VAC30-40-370) that were included verbatim from outdated versions of the EPA Manual are removed, and these provisions are replaced with the requirements from the most recent version of the EPA Manual as incorporated by reference into 1VAC30-41-50. The regulatory provisions refer to the appropriate requirements in the EPA Manual and its Supplement.

3. The general fee provisions of current 1VAC30-40-60 are deleted, and new fee provisions in 1VAC30-41-270 are added. Public laboratories as well as private laboratories would pay fees.

4. A new provision, 1VAC30-41-30, allowing drinking water laboratories to obtain certification by meeting the requirements of 1VAC30-46, Accreditation for Commercial Environmental Laboratories, is added.

5. Many of the provisions in Part I (1VAC30-40-10 et seq.) and Part II (1VAC30-40-90 et seq.) of the current regulation are revised to be more specific, and out-of-date references are removed. These sections cover definitions, application requirements, reciprocal certification, renewal of certification, modification of certification, general quality assurance requirements, onsite assessment, certification type, maintenance of certification status, reporting requirements, reasons to downgrade a laboratory to provisionally certified status, procedure to downgrade a laboratory to provisionally certified status, reasons to revoke certification, and procedures to revoke certification, to appeal revocation, and for requesting reinstatement of certification.

6. New provisions to improve the clarity of the regulation or to include necessary requirements where none exist in the current regulation are added. These are listed as follows:

a. 1VAC30-41-20 defines the laboratories and contaminants that are covered by the regulation.

b. 1VAC30-41-60 describes the categories for which a laboratory may be certified.

c. 1VAC30-41-80 describes the requirements laboratories must meet to become certified and provides cross-references to the detailed requirements.

d. 1VAC30-41-130 establishes the requirements for proficiency testing.

e. 1VAC30-41-140 requires laboratories to meet the laboratory ethics and fraud detection and deterrence requirements of the Supplement to the EPA Manual. EPA encourages laboratories to meet these requirements.

f. 1VAC30-41-170 establishes a one-year term for certification.

g. 1VAC30-41-200 sets out specific requirements for notifying DCLS of major changes to personnel and equipment at a laboratory and for a change of laboratory location.

h. 1VAC30-41-460 sets out the quality assurance requirements for microbiology laboratories.

7. Current 1VAC30-40-85 has been moved to 1VAC30-41-55. This section lists and incorporates by reference the Code of Federal Regulation requirements for drinking water laboratory test methods and associated requirements.

Issues: The primary advantage to the public of the proposed regulation is to maintain up-to-date certification of laboratories analyzing drinking water. While the drinking water laboratories are already meeting the provisions of the proposed regulation, the current regulation does not contain these provisions. As a result the agency cannot enforce compliance with the current federal guidance requirements for the certification of these laboratories. Revising the regulation provides the agency with the ability to enforce these requirements. There are no disadvantages to the general public associated with this regulatory action.

There are two primary advantages to the agency and the Commonwealth associated with this regulatory action. The first is the ability to enforce the current federal guidance on the certification of drinking water laboratories and maintain Virginia's primacy for drinking water rather than having primacy relinquished to EPA. The second relates to the fees charged to laboratories for the certification process. Current fees cover only a minimal portion of the cost of the program. No general funds have been allocated to cover the cost of the certification program. The current regulation waives fees for public laboratories. The proposed regulation would eliminate the waiver and charge fees to public laboratories. One-third of the laboratories certified under the program are public laboratories. The cost to the agency of running the program has increased over the almost two decades since DCLS began charging fees. Charging fees to public laboratories as well as to private laboratories will help to recover the cost of the program to the agency. Spreading the cost of the program among all the laboratories certified under the program will be a more equitable approach to fees.

The primary disadvantage of the proposed regulatory action is to the public laboratories in that they will now be charged fees. The revised regulation charges fees to public laboratories as well as to private laboratories.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Division of Consolidated Laboratory Services (DCLS) proposes to repeal its current regulations that govern certification of laboratories that analyze drinking water and, at the same time, promulgate a new regulatory chapter that will replace and update the regulations being repealed. Changes between the current and proposed regulations will:

1. Remove references to outdated versions of the Environmental Protection Agency (EPA) manual that sets rules for testing,

2. Change the regulatory language on fees to remove the fee waiver for public labs and clarify that fees will be changed once a year if necessary,

3. Allow drinking water laboratories an alternate path to certification by meeting the requirements of 1VAC30-46 (Accreditation of Commercial Environmental Laboratories), and

4. Add new provisions that clarify already existing requirements for laboratories.

Result of Analysis. Benefits likely outweigh costs for most proposed regulatory changes. For one proposed change, there is insufficient information to ascertain whether benefits outweigh costs.

Estimated Economic Impact. Current regulations establish rules for laboratories, both public and private, that test drinking water. Currently, private labs pay fees but public labs have a waiver for fees.[1] Most of the changes that will be reflected in the proposed new regulatory chapter will remove obsolete language or move guidance language into regulation. These changes will benefit affected entities, as they will tend to clarify what the rules are. Affected entities are unlikely to incur any additional costs on account of these clarifying changes.

Current regulations inform affected entities of how fees are set and waive fees for local, state and federal public labs. Below is a comparison table for 2009/2010 and 2011 certification fees (fees have not been set for 2012):

FEE TYPE	2009/2010 FEES	2011 FEES	% INCREASE
Microbiology	$250	$500	100%
Inorganic Chemistry	$280	$800	186%
Organic Chemistry	$280	$900	221%
Radiochemistry	$250	$950	280%
Asbestos	N/A	$850	N/A

DCLS reports that the current fee structure only covers a minimal portion of the actual cost of administering this program and that they do not have money in programs budget to support the waivers that public labs currently get. As a consequence DCLS proposes to eliminate the waiver language and require that public labs pay the same fees as private ones. This change will benefit DCLS and the public as it will allow the lab certification program to be fully funded. Public labs will incur costs equal to whatever fee level equivalent private labs incur. Some public labs may find these fees prohibitive and may choose not to be certified (and therefore will not test drinking water). There is insufficient information to decide whether the benefits will outweigh the costs for this change.

DCLS proposes one other substantive change in the new regulations that will allow labs an alternate path to certification. Under this proposal, labs can be certified by meeting the requirements of 1VAC30-46 (Accreditation of Commercial Environmental Laboratories). Labs will likely only use this alternate path if the benefits of doing so outweigh the costs.

Businesses and Entities Affected. DCLS reports that 146 labs are currently certified through this program. 52 of these are public labs.

Localities Particularly Affected. Localities with certified labs will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. The removal of fee waivers for public labs in this regulatory action may decrease the number of public labs that are able to afford certification.

Effects on the Use and Value of Private Property. This regulatory action is unlikely to have an appreciable effect on the use or value of private property.

Small Businesses: Costs and Other Effects. DCLS estimates that approximately 60% of the 94 private labs that they certify would qualify as small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternate methods of regulation that would both allow DCLS to ensure compliance with federal law and reduce costs.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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.

[1] Fees are set outside of these regulations as mandated by the Code of Virginia. Fees can be changed once a year and are set at the amount necessary to pay the costs of the certification program.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed regulation (i) updates the drinking water laboratory certification regulation to incorporate by reference the most recent Environmental Protection Agency (EPA) approved test methods and laboratory-specific requirements in the EPA's Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition (January 2005) and Supplement 1 to the Fifth Edition (June 2008); (ii) revises the fee provisions and requires local, state, and federal public laboratories, as well as private or commercial laboratories, to pay fees for certification; (iii) adds an alternative for drinking water laboratories to obtain certification by meeting the requirements of 1VAC30-46, Accreditation for Commercial Environmental Laboratories, as an alternative to meeting the drinking water laboratory certification regulation; and (iv) sets out the requirements to certify laboratories that analyze drinking water samples and determine compliance with federal Safe Drinking Water Act (SDWA) contaminant limits.

CHAPTER 41
REGULATION FOR THE CERTIFICATION OF LABORATORIES ANALYZING DRINKING WATER

Part I
General Provisions

1VAC30-41-10. Purpose.

A. This chapter establishes the requirements for certification of drinking water laboratories.

B. The federal Safe Drinking Water Act (SDWA) mandates the establishment of a national drinking water program to protect public health. The U.S. Environmental Protection Agency (EPA) at 40 CFR 141.28 requires that laboratories be certified to analyze samples of drinking water for compliance purposes. EPA at 40 CFR 142.10(b)(3)(i) requires states to establish and maintain programs for the certification of drinking water laboratories.

C. The Virginia Department of Health, Office of Drinking Water (VDH-ODW) maintains primary enforcement responsibility (primacy) under the SDWA and the federal SDWA regulations for the Commonwealth of Virginia. The VDH-ODW at 12VAC5-590-340 requires that all analyses done to demonstrate compliance with primary and secondary maximum contaminant levels or action levels be performed by the Division of Consolidated Laboratory Services of the Department of General Services (DCLS) or by laboratories certified by DCLS. VDH-ODW at 12VAC5-590-440 further requires that laboratories seeking certification to perform drinking water analyses shall comply with this chapter.

1VAC30-41-20. Applicability.

A. This chapter applies to the following:

1. Owners of drinking water laboratories in Virginia.

2. Owners of drinking water laboratories located outside Virginia who seek reciprocal certification under 1VAC30-41-90.

B. Covered contaminants.

1. This chapter covers the contaminants regulated in 40 CFR Parts 141 and 143 as specified in 12VAC5-590, Waterworks Regulations, of the Virginia Department of Health.

2. Laboratory testing for alkalinity, calcium, chlorite, conductivity, disinfectant residual, orthophosphate, pH, silica, temperature, and turbidity for compliance purposes may be performed by laboratories or persons not certified under this chapter but acceptable to VDH-ODW.

1VAC30-41-30. Alternative certification for drinking water laboratories.

Drinking water laboratories may become certified by meeting the requirements for accreditation set out in 1VAC30-46.

1VAC30-41-40. Definitions.

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

"Analyst" means a chemist, microbiologist, physicist, or technician who actually performs a test. The analyst may carry out the complete test or participate jointly with other analysts.

"Certification officer" means a DCLS employee who has the responsibility for evaluating drinking water laboratories for certification.

"Contaminant" means any objectionable or hazardous physical, chemical, biological, or radiological substance or

matter in water. Contaminants are the analytes for which drinking water laboratories test in the drinking water samples they analyze.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect, or other undesirable situation in order to prevent recurrence.

"DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Drinking water laboratory" or "laboratory" means a laboratory that performs analyses to demonstrate compliance with primary or secondary maximum contaminant levels or action levels or any combination of these specified in 12VAC5-590.

"EPA" means the United States Environmental Protection Agency.

"Findings" means factual, objective statements that provide evidence of deficiencies in meeting the requirements of this chapter.

"Laboratory director" or "laboratory supervisor" means the person who directs the operation of the drinking water laboratory on a day-to-day basis.

"Manual" means the EPA Office of Water, Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures Quality Assurance, Fifth Edition, EPA 815-R-05-004 (January 2005).

"Manual Supplement" means the EPA Office of Water, Supplement 1 to the Fifth Edition of the Manual for the Certification of Laboratories Analyzing Drinking Water, EPA 815-F-08-006 (June 2008).

"Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water that is delivered to any user of a waterworks, except in the cases of turbidity and volatile organic compounds (VOCs), where the maximum permissible level is measured at each entry point to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. Maximum contaminant levels may be either "primary" (PMCL), meaning based on health considerations, or "secondary" (SMCL), meaning based on aesthetic considerations.

"Owner" means any person who owns, operates, leases, or controls a drinking water laboratory.

"Persistent" means to continue an activity without change in spite of opposition or warning.

"Private laboratory" means a laboratory that is, or is part of, a commercial entity.

"Proficiency testing sample" or "PT sample" means a sample, the composition of which is unknown to both the analyst and the laboratory. The PT sample tests whether the analyst or laboratory or both can produce analytical results within specified acceptance criteria.

"Public laboratory" means a laboratory that is, or is part of, a local, state, or U.S. governmental agency.

"Quality assurance" means an integrated system of management activities involving planning, quality control, quality assessment, reporting, and quality improvement to ensure that a product or service meets defined standards of quality with a stated level of confidence.

"Quality assurance plan" or "QA plan" means a comprehensive plan detailing the aspects of quality assurance needed to adequately fulfill the data needs of a program.

"Quality control" means

1. The overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of the users.

2. The operational techniques and activities that are used to fulfill requirements for quality.

"SDWA" means the Safe Drinking Water Act (42 USC § 300f et seq.).

"VDH-ODW" means the Virginia Department of Health - Office of Drinking Water.

1VAC30-41-50. Incorporation by reference - EPA guidance documents.

A. The following EPA guidance documents are incorporated by reference into this chapter:

1. Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures Quality Assurance, Fifth Edition, EPA 815-R-05-004 (January 2005).

2. Supplement 1 to the Fifth Edition of the Manual for the Certification of Laboratories Analyzing Drinking Water, EPA 815-F-08-006 (June 2008).

B. The federal regulatory requirements incorporated by reference into 1VAC30-41-55 shall govern if a conflict is found between the requirements of the Manual or the Manual Supplement and the requirements incorporated by reference into 1VAC30-41-55.

1VAC30-41-55. Incorporation by reference - Code of Federal Regulations.

A. The sampling, analytical methodology, and laboratory certification requirements of 40 CFR 141 and 143 in effect as of July 1, 2011, are incorporated by reference into this chapter.

B. The specific sampling, analytical methodology, and laboratory certification requirements incorporated by reference are listed as follows by category for information purposes:

1. Inorganic chemistry: 40 CFR 141.23, 40 CFR 141.89, and 40 CFR 141.131.

2. Organic chemistry: 40 CFR 141.24 and 40 CFR 141.131.

3. Microbiology: 40 CFR 141.21, 40 CFR 141.74, 40 CFR 141.174, 40 CFR 141.704, and 40 CFR 141.705. 40 CFR 136.3(a) for E. coli requirements under 40 CFR 141.704.

4. Radiochemistry: 40 CFR 141.25.

5. Alternative testing methods: 40 CFR Part 141, Subpart C, Appendix A.

6. Test methods specified for secondary maximum contaminant levels: 40 CFR 143.4.

C. The exceptions to the requirements for laboratory certification in 40 CFR 141.28, 40 CFR 141.74(a), 40 CFR 141.89(a)(1), 40 CFR 141.131(b)(3), and 40 CFR 141.131(c)(3) are incorporated by reference into this chapter.

Part II

Certification of Laboratories - General Requirements

1VAC30-41-60. Categories of certification.

A. Laboratories may apply to be certified for inorganic chemistry, organic chemistry, microbiology, radiochemistry, or any combination of these four categories of certification.

B. Within each category, laboratories may be certified for specific contaminants or contaminant groups and for one or more methods used to determine the levels of these contaminants.

1VAC30-41-70. Initial certification application.

A. Application for initial certification. Drinking water laboratories applying under this chapter shall submit a completed Application for Certification, obtained by contacting the DCLS Laboratory Certification Office. A complete application contains:

1. Specific laboratory information, including name of organization, name of laboratory director, and contact information.

2. Identification of public water systems served by the laboratory.

3. Identification of the drinking water certification contaminants or contaminant groups and related methods for which the laboratory requests certification.

4. A quality assurance plan that meets the requirements of (i) Chapter III, Section 11 of the Manual and (ii) the Manual Supplement to Chapter III, Section 2 as required by 1VAC30-41-120.

5. A satisfactory report of at least one proficiency test performed within the last 12 months for each method and contaminant for which the laboratory seeks certification.

6. Laboratory personnel list.

7. Requested laboratory data, including at a minimum:

a. For microbiology applications:

(1) Equipment and supply list.

(2) Sampling information and test results for at least 20 analyses for each method and contaminant for which the laboratory seeks certification.

b. For chemistry applications:

(1) Instrumentation and equipment list.

(2) Method detection limit (MDL) documentation for each requested method and contaminant for which the laboratory seeks certification.

(3) Initial demonstration of capability (IDC) documentation for each requested method and contaminant for which the laboratory seeks certification.

c. For radiochemistry applications:

(1) Instrumentation and equipment list.

(2) Minimum detectable activity (MDA) documentation for each requested method and contaminant for which the laboratory seeks certification.

(3) Initial demonstration of capability (IDC) documentation for each requested method and contaminant for which the laboratory seeks certification.

8. Payment of the fee required by 1VAC30-41-270.

B. DCLS review of application submittal.

1. DCLS shall administratively review the application submittal and respond to the applicant laboratory within 60 calendar days.

2. If DCLS finds that the application submittal is complete, a certification officer shall arrange a mutually agreeable time and date with the laboratory for an onsite assessment.

3. If DCLS finds that the application submittal is incomplete, a certification officer shall request the applicant laboratory to submit the additional information or documentation required within 90 days.

4. If the laboratory has not submitted the required additional information within 90 days of the DCLS request for information, DCLS may return the incomplete application and inform the laboratory that the application cannot be processed. The laboratory may then submit a new application.

1VAC30-41-80. Certification requirements.

To become certified, a laboratory shall meet or successfully complete the following:

1. Requirements for a quality assurance plan in 1VAC30-41-120.

2. Analysis of a proficiency testing sample for each contaminant and each method for which certification is sought. Proficiency testing requirements are set out in 1VAC30-41-130.

3. Specific requirements for chemistry, microbiology, or radiochemistry that are pertinent to the specific laboratory's application for certification. These requirements are set out in Part III (1VAC30-41-300 et seq.) through Part V (1VAC30-41-500) of this chapter.

4. Onsite assessment by DCLS certification officers at least once every three years. Onsite assessment requirements are set out in 1VAC30-41-150.

5. The laboratory ethics and fraud detection and deterrence requirements set out in 1VAC30-41-140.

6. Payment of the fee required by 1VAC30-41-270.

1VAC30-41-90. Reciprocity.

A. DCLS may grant reciprocal certification to a drinking water laboratory located outside Virginia, provided the laboratory demonstrates the need to serve customers in Virginia and is certified by EPA or another state under equivalent certification criteria.

B. To be considered for certification, the applicant laboratory shall send DCLS the following:

1. A copy of the certificate and scope of certification issued by the laboratory's primary certifying or accrediting authority.

2. A list of the methods and the contaminants tested under each method for which the laboratory is requesting certification.

3. The most recent proficiency testing report for each method and contaminant combination listed by the laboratory under subdivision 2 of this subsection.

4. The fee required under 1VAC30-41-270.

5. Confirmation that Virginia has been added to the proficiency testing provider's list of certifying authorities to which the laboratory's proficiency testing results will be reported.

C. Out-of-state laboratories holding National Environmental Laboratory Accreditation Conference (NELAC) accreditation for drinking water that seek reciprocal accreditation for drinking water in Virginia shall apply for that accreditation under 1VAC30-46.

1VAC30-41-100. Renewal of certification.

DCLS shall renew the certification for a drinking water laboratory if the laboratory maintains its certified status as required by 1VAC30-41-180, and pays the annual fee as required by 1VAC30-41-270.

1VAC30-41-110. Modification of certification.

A. To request the addition of contaminants or methods to its certification, the drinking water laboratory shall submit the following to DCLS:

1. A completed DCLS drinking water certification application form.

2. An acceptable proficiency testing report for each requested method and contaminant, performed within the last 12 months.

3. The standard operating procedures for the requested methods.

4. The current quality assurance plan, if requested.

5. For chemistry:

a. Method detection limit (MDL) documentation for each requested method and contaminant for which the laboratory seeks certification.

b. Initial demonstration of capability (IDC) documentation for each requested method and contaminant for which the laboratory seeks certification.

6. For microbiology, sampling information and test results for at least 20 analyses by the requested method and contaminant combination.

7. Applicable fees as required by 1VAC30-41-270.

B. To drop a contaminant or a method from the laboratory's certification, the laboratory shall submit a request in writing to the DCLS Laboratory Certification Office.

1VAC30-41-120. Quality assurance plan.

A drinking water laboratory shall develop and maintain a quality assurance plan that meets the requirements of (i) Chapter III, Section 11 of the Manual and (ii) the Manual Supplement to Chapter III, Section 2.

1VAC30-41-130. Proficiency testing.

A. A drinking water laboratory shall meet the following requirements pertaining to proficiency testing (PT):

1. The requirements of this section.

2. The requirements of Chapter III, Section 13.1 of the Manual.

3. The specific requirements of the Manual for chemistry in Chapter IV, Section 7.2.1; for microbiology in Chapter V, Section 7.2; and for radiochemistry in Chapter VI, Section 7.4 that are pertinent to the laboratory.

B. A drinking water laboratory shall successfully participate in at least one water supply (WS) PT study per calendar year for each contaminant and by each method for which the laboratory seeks or wants to maintain certification.

C. Drinking water laboratories shall obtain WS PT studies from PT providers approved by the American Association for Laboratory Accreditation utilizing the National Standards for Water Proficiency Testing Studies.

D. Drinking water laboratories shall instruct the PT providers to send the results of the WS PT studies to the DCLS Laboratory Certification Office.

E. WS PT study results.

1. DCLS shall certify or maintain certification for a drinking water laboratory for which WS PT study results are reported by the proficiency test provider as "acceptable."

2. A drinking water laboratory for which some or all WS PT study results are reported as "not acceptable" shall follow the procedure in subsection F of this section.

F. Procedure and requirements for "not acceptable" PT study results.

1. When a laboratory receives a PT study result of "not acceptable," the laboratory shall perform and document

corrective action. The corrective action documentation shall be submitted to DCLS within 30 days of receiving the "not acceptable" PT study result.

2. Upon completion of the corrective action, the laboratory shall perform another PT study for each contaminant that had a "not acceptable" initial PT study result.

3. If the result of the laboratory's makeup PT study is "acceptable," DCLS shall not downgrade the laboratory.

4. If the laboratory fails the makeup PT study, DCLS shall downgrade the laboratory to provisionally certified status for the contaminant or contaminants for which the PT study was "not acceptable."

5. When DCLS becomes aware of a failure to comply with PT study requirements, DCLS shall notify the laboratory of its downgraded status within 14 days of the downgrade. DCLS shall send the notification by certified mail or an equivalent mailing service.

6. The laboratory shall correct the problems that caused the downgrade and satisfactorily analyze another PT study within three months. A laboratory may not be provisionally certified for more than three months.

7. If the result of the second makeup PT study is "acceptable," the laboratory can request DCLS in writing to restore its certified status.

8. If the result of the second makeup PT is "not acceptable," DCLS shall revoke certification for the contaminant or contaminants for which the PT study was unsuccessful.

9. DCLS shall follow the provisions of 1VAC30-41-240 in revoking the laboratory's certification.

1VAC30-41-140. Laboratory ethics and fraud detection and deterrence.

Drinking water laboratories shall meet the requirements of the Manual Supplement to Chapter III of the Manual concerning laboratory ethics and fraud detection and deterrence.

1VAC30-41-150. Onsite laboratory assessment.

A. Frequency of onsite laboratory assessments.

1. DCLS shall assess a drinking water laboratory when the laboratory owner initially applies for certification and at least once every three years after initial certification is granted.

2. DCLS may perform an onsite assessment if major changes in personnel or equipment occur at the laboratory or if the location of the laboratory changes.

3. DCLS may perform interim onsite assessments to confirm that a laboratory has carried out a corrective action plan.

4. DCLS may perform unannounced onsite assessments.

B. Action prior to a scheduled onsite assessment.

1. DCLS shall arrange a mutually agreeable date and time for the onsite assessment with the drinking water laboratory's management.

2. Prior to the onsite audit, DCLS shall request and the laboratory shall provide current records and information that are necessary to evaluate the laboratory. These records and information may include the following:

a. Quality manual.

b. Personnel list.

c. Instrument list or equipment list or both.

d. Standard operating procedure (SOP) for each method to be evaluated.

e. A data package specified by the certification officer.

f. For chemistry, the most recent method detection limit (MDL) study for each regulated contaminant to which the MDL requirement applies.

C. Opening conference. The DCLS onsite assessor or team shall begin the process of the onsite assessment by holding a conference to state the purpose of the assessment, identify the assessment team, and set out the tasks to be done during the assessment.

D. Assessment process.

1. The DCLS onsite assessment team shall evaluate laboratory personnel qualifications and training, operations, equipment, supplies, general laboratory practices, sample handling procedures, methodology, written procedures, and records. The team shall perform the assessment for those specific methods and contaminants for which the laboratory has requested certification.

2. DCLS may require a laboratory to demonstrate drinking water testing methods during the assessment.

3. The DCLS onsite assessment team shall perform a data audit on at least one sample and on one PT sample for at least one method.

4. The DCLS onsite assessment team shall discuss observed deviations at the time such deviations are observed.

5. Findings or deviations are considered preliminary until the final report is issued.

E. Closing conference.

1. The onsite assessment team shall conduct a closing conference to review the results of the assessment with laboratory staff and management.

2. The onsite assessment team shall discuss the following:

a. Any deviations in the observed procedures and records.

b. The time frame for any corrective actions needed and the response.

c. Recommendations, if necessary, for changes in equipment and supplies, staffing, and facility.

F. Notification. Within 30 calendar days after the onsite assessment, DCLS shall notify the laboratory of its certification status and send the laboratory the final onsite assessment report.

G. Final report. In its final onsite report, DCLS:

1. Shall list the certification status for each contaminant or, if applicable, each class of contaminants evaluated as determined by DCLS as a result of the onsite assessment.

2. Shall list and describe each finding, providing a reference to the underlying requirement.

3. May recommend changes to correct the problems described in the findings that have resulted in the laboratory not obtaining certification for a particular contaminant.

4. May recommend improvements to laboratory operation, recognize outstanding performance, and provide other information of use to the laboratory.

H. Results of the onsite assessment.

1. DCLS shall certify the laboratory when the onsite assessment shows that the laboratory has established or is maintaining the standards of quality required under this chapter.

2. When DCLS finds during the onsite assessment that the laboratory is not maintaining the standards of quality required under this chapter, the laboratory shall follow the procedure in subsection I of this section.

I. Procedures and requirements when findings are reported.

1. The laboratory shall respond with a corrective action plan for all findings issued in the report within 60 calendar days. This corrective action plan shall specify what immediate corrective actions are being taken and any proposed actions that need the concurrence of DCLS.

2. DCLS shall review the corrective action plan. If DCLS finds that any aspect of the laboratory's corrective action plan is inadequate, it shall notify the laboratory director in writing by certified mail or other equivalent mailing service of its intent to downgrade the laboratory.

3. The laboratory director shall respond within 30 calendar days with an additional corrective action plan. If the additional corrective action plan is still deficient, DCLS shall not issue a certificate for the initial application or shall downgrade the laboratory to provisionally certified status.

4. DCLS shall respond within 14 days of determining the laboratory's letter and corrective action plan are deficient.

5. The laboratory shall correct the problems cited in the initial notification letter within three months of the date the laboratory was downgraded.

6. If within three months the laboratory has not corrected the problems for which DCLS downgraded the laboratory to provisionally certified status, DCLS shall revoke the laboratory's certification status.

7. DCLS shall revoke certification only for the contaminants and methods for which the laboratory was initially cited.

8. DCLS shall follow the provisions of 1VAC30-41-240 in revoking the laboratory's certification.

9. When DCLS reports a finding that had been identified in the previous triannual onsite assessment where the laboratory had not implemented corrective action, DCLS shall downgrade the laboratory to provisionally certified.

10. A provisionally certified laboratory may continue to analyze samples for compliance purposes but shall notify its clients in writing of its downgraded status and shall indicate its downgraded status in writing on any report.

1VAC30-41-160. Levels of certification.

A. Certified. DCLS shall certify a laboratory that meets the criteria set out in this chapter.

B. Interim certification. DCLS may issue an interim certification when it finds that performing an onsite assessment is unnecessary or when the onsite assessment cannot be scheduled within a reasonable time. This may occur when DCLS reviews a laboratory application for an addition to its certification status or when a laboratory notifies DCLS that its location is changing. The laboratory shall maintain the requirements for certification while awaiting the onsite assessment. DCLS shall perform the onsite assessment as soon as possible. Interim certification status is equivalent to certified status.

C. Provisionally certified. DCLS shall provisionally certify a laboratory that has deficiencies as a preliminary stage prior to revocation. A provisionally certified laboratory may continue to analyze drinking water samples for compliance purposes. The laboratory shall notify its clients of the downgraded status in writing and indicate the status on reports. A laboratory may not be provisionally certified for more than three months.

D. Not certified. DCLS shall not certify a laboratory that possesses deficiencies and, in the opinion of DCLS, cannot consistently produce valid data. A laboratory that has had its certification revoked in whole or in part shall notify its clients of its revoked status in writing.

1VAC30-41-170. Term of certification.

DCLS shall certify drinking water laboratories for a period of one year.

1VAC30-41-180. Maintenance of certified status.

To maintain its certified status, a laboratory shall:

1. Continue to meet the requirements for certification listed in 1VAC30-41-80.

2. Successfully pass water supply proficiency testing studies annually as required by 1VAC30-41-130.

3. Notify DCLS in writing within 30 calendar days of major changes in personnel, equipment, or laboratory location as specified in 1VAC30-41-200.

4. Use approved methodology as required by this chapter and incorporated by reference into 1VAC30-41-55.

5. Comply with the reporting requirements specified in 1VAC30-41-190.

1VAC30-41-190. Reporting requirements.

A. To maintain certification, drinking water laboratories shall comply with the reporting requirements set out in the VDH-ODW regulations specified as follows:

1. Compliance, monitoring, and exceedances, 12VAC5-590-530.

2. Public notices, 12VAC5-590-540.

B. Drinking water laboratories shall report the results of analyses to the VDH-ODW within three days of completion unless 12VAC5-590-530 or 12VAC5-590-540 requires a different time limit.

1VAC30-41-200. Major changes in personnel or equipment or a change of laboratory location.

A. Major change in personnel.

1. The drinking water laboratory shall notify DCLS of a major change in the laboratory's personnel in writing within 30 calendar days of the change.

2. A "major change in personnel" is defined as (i) the loss or replacement of the laboratory director or laboratory supervisor or (ii) the loss of all the trained and experienced analysts who had been available to analyze a particular contaminant for which certification has been granted.

3. DCLS shall follow the procedure in 1VAC30-41-220 to downgrade the laboratory to provisionally certified status if the laboratory fails to notify DCLS within 30 calendar days of a major change in personnel.

B. Change of laboratory location.

1. The laboratory shall notify DCLS of a change in the laboratory's location in writing at least 30 calendar days prior to the location change.

2. DCLS may perform an onsite assessment of the new facility when a laboratory changes location.

3. DCLS shall follow the procedure in 1VAC30-41-220 to downgrade the laboratory to provisionally certified status if the laboratory fails to notify DCLS of a change in the laboratory's location at least 30 days prior to the location change.

C. Equipment.

1. A drinking water laboratory shall notify DCLS in writing within 30 calendar days of a major change in equipment.

2. A drinking water laboratory shall provide the following information to DCLS about new equipment:

a. Make and model of the new instrument.

b. Date of installation and training.

c. Initial demonstration of capability (IDC) and minimum detection limit (MDL).

d. Updated standard operating procedure (SOP).

e. Methods and contaminants for which the instrument will be used.

f. Successful proficiency testing analyzed on the new instrument.

g. Date the instrument was put into service analyzing compliance samples.

3. DCLS shall follow the procedure in 1VAC30-41-220 to downgrade the laboratory to provisionally certified status if the laboratory fails to notify DCLS within 30 calendar days of any major change in equipment.

D. Laboratory action to address major changes to personnel or equipment or a change of location.

1. When a major change to laboratory personnel or equipment or a change of location occurs, the laboratory shall establish a schedule to address the change and provide the schedule in writing to DCLS. The laboratory shall submit the schedule to DCLS along with the notification of the change.

2. If DCLS determines that the laboratory can no longer produce valid data because of the major change in personnel or equipment or the change of location, DCLS shall follow the procedure in 1VAC30-41-240 to revoke certification for the contaminants in question.

1VAC30-41-210. Downgrading to provisionally certified status.

DCLS shall downgrade a certified drinking water laboratory's status to provisionally certified for each contaminant and by each method for any of the following reasons:

1. Failure to analyze a PT sample each calendar year during the period defined by DCLS and within the acceptance limits specified in the regulations incorporated by reference in 1VAC30-41-55.

2. Failure to successfully analyze a PT sample for a contaminant after participating in two successive PT studies.

3. Failure to notify DCLS within 30 calendar days of major changes in personnel or equipment or a change in laboratory location as required by 1VAC30-41-200.

4. Failure to satisfy DCLS that the laboratory is maintaining the required standard of quality based upon the onsite assessment requirements in 1VAC30-41-150.

5. Failure to comply with the reporting requirements of 1VAC30-41-190 in a timely manner.

1VAC30-41-220. Procedure to downgrade to provisionally certified status.

A. DCLS shall notify the laboratory director in writing that DCLS intends to downgrade the laboratory to provisionally certified status. DCLS shall send this notification within 14 days of becoming aware of the cause for the downgrade. DCLS shall send the notification by certified mail or other equivalent mailing service.

B. The laboratory director shall review the problems cited in the notice. Within 30 days of receiving the notice, the laboratory director shall send DCLS a letter specifying what immediate corrective actions are being taken and any proposed action that needs the concurrence of DCLS.

C. DCLS shall consider the adequacy of the laboratory's response and notify the laboratory director in writing by certified mail or other equivalent mailing service of the laboratory's certification status. DCLS shall respond within 14 days of receiving the laboratory's letter and corrective action plan.

D. The laboratory shall correct the problems cited in the initial notification letter from DCLS within three months of the date of the DCLS response to the laboratory's corrective action plan.

E. If within three months the laboratory has not corrected the problems for which DCLS downgraded the laboratory to provisionally certified status, DCLS shall revoke the laboratory's certification status. This revocation shall apply only to the contaminants and methods for which the laboratory was initially cited in the DCLS downgrade notification.

F. DCLS shall follow the provisions of 1VAC30-41-240 in revoking the laboratory's certification.

G. A provisionally certified laboratory may continue to analyze samples for compliance purposes but shall notify its clients in writing of its downgraded status and shall indicate its downgraded status in writing on any report.

1VAC30-41-230. Revocation of certified status.

DCLS shall downgrade a drinking water laboratory's status to not certified from certified or provisionally certified or interim certified status for each contaminant and by each method for any of the following reasons:

1. Falsification of data or use of other deceptive practices.

2. Reporting proficiency testing data from another laboratory as its own.

3. Failure to use the federally-approved methods incorporated by reference into this chapter at 1VAC30-41-55.

4. Refusal to participate in an onsite assessment conducted by DCLS.

5. Failure to pay the annual fee to DCLS.

6. For provisionally certified laboratories, failure to successfully analyze a PT sample or any other unknown test sample for a particular contaminant within the specified acceptance limits.

7. For provisionally certified laboratories, failure to satisfy DCLS that the laboratory has corrected identified deficiencies based on an onsite assessment.

8. For provisionally certified laboratories, persistent failure to comply with the reporting requirements specified in 1VAC30-41-190.

1VAC30-41-240. Procedure to revoke certification.

A. DCLS shall notify the laboratory owner in writing of its intent to revoke certification. DCLS shall describe in detail the reasons and circumstances that form the basis for revoking certified status in this notice. DCLS shall send the notification by certified mail or an equivalent mailing service.

B. DCLS shall provide an opportunity for an informal fact-finding conference pursuant to § 2.2-4019 of the Code of Virginia prior to making a final decision to revoke certification.

C. A drinking water laboratory that has had its certification revoked for methods and contaminants under the methods shall do the following:

1. Stop analyzing SDWA compliance samples for these contaminants and methods.

2. Send the samples to a laboratory that is certified to perform the analyses.

3. Notify its clients of its revoked status in writing.

1VAC30-41-250. Appeal procedure.

A laboratory may appeal a final decision to revoke certification by DCLS pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

1VAC30-41-260. Reinstatement of certification.

A. A drinking water laboratory may request in writing to have its certification status upgraded or reinstated.

B. DCLS shall upgrade or reinstate certification when the laboratory can demonstrate that it has corrected the deficiencies that produced the downgrading or revocation of certified status.

C. DCLS may require an onsite assessment or successful completion of a water supply proficiency testing study or both before upgrading or reinstating a drinking water laboratory. If the onsite assessment is necessary, the laboratory shall pay the fees set out in 1VAC30-41-270 H.

1VAC30-41-270. Fees.

A. DCLS shall charge a fee to certify drinking water laboratories. This fee shall be limited to the cost of administering the certification program.

B. Required fees.

1. Drinking water laboratories shall submit payment of the fee with the initial applications for certification.

2. Drinking water laboratories located out-of-state and applying for reciprocal certification shall submit payment of the fee with the initial applications.

3. Once certified under this chapter, drinking water laboratories shall pay the fee annually. DCLS shall send an invoice to the certified drinking water laboratory.

4. Additional fees may apply under subsection K of this section when changes to the laboratory's certification require DCLS staff time to administer the change.

C. DCLS shall not consider an application to be complete until the applicant laboratory submits payment of the certification fee.

D. All incomplete payments shall be deemed as nonpayment. Nonpayment of fees shall result in denial or revocation of certification.

E. Payment of fees shall be nonrefundable.

F. DCLS, under 1VAC30-41-230, may revoke the certification of any certified laboratory that does not pay its annual fee.

G. Fee computation.

1. Fees for certification of drinking water laboratories shall be applied on an annual basis.

2. Drinking water laboratories shall pay the total of the base year fees as required by subsections H and J of this section for the first 12 months following [insert the effective date of this chapter].

3. Beginning [insert the thirteenth month following the effective date of this chapter], drinking water laboratories shall pay the total of the base year fees required by subsection H and Table 1 of subsection J of this section as adjusted by the method set out in subsection I of this section.

H. Calculation of fees - base year fees [insert year of the effective date of this chapter].

1. DCLS charges a fee for the review and certification of the drinking water laboratory's quality system. This includes a review of the test methods for which the drinking water laboratory requests or holds certification. The fees are based on the number of test methods for which the laboratory would be certified within each of the six testing categories set out in Table 1 of subsection J of this section.

2. DCLS shall calculate a laboratory's fees by adding the fees for the number of test methods in each category as set out in Table 1 of subsection J of this section for which the laboratory applies or is certified.

3. For example, a laboratory may be certified for three microbiological methods ($700); five inorganic chemistry, nonmetals methods ($850); two inorganic chemistry, metals methods ($1000); and two organic chemistry methods ($1050). The total annual fee would be $3600.

I. Calculation of fees - fees beginning [insert the thirteenth month following the effective date of this chapter].

1. DCLS shall revise the base year fees after the first 12 months following the effective date of this chapter and every 12-month period thereafter.

2. DCLS shall increase or decrease the fees set out in Table 1 of subsection J of this section using the Consumer Price Index-Urban (CPI-U) percentage change, average-average for the previous calendar year. (The CPI-U for all urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics.)

3. DCLS shall revise each previous year's Table 1 of subsection J of this section so that the revisions will be cumulative, reflecting the changes in the CPI-U over time.

4. DCLS shall round the revised fees to the nearest whole dollar.

5. DCLS shall publish the revised fee table annually on its website for drinking water laboratory certification. This website can be found by going to the DCLS page of the Department of General Services' website at http://dgs.virginia.gov.

J. Fee tables.

1. Fees are calculated using the base year fees in Table 1.

Table 1 - Base Year Fees

Testing Category	Fee ($)
Microbiological testing	
1 - 2 methods	600
3 - 5 methods	700
6+ methods	800
Inorganic chemistry, nonmetals testing	
1 - 2 methods	650
3 - 5 methods	850
6 - 8 methods	1050
9+ methods	1250
Inorganic chemistry, metals testing	
1 - 2 methods	1000
3 - 5 methods	1200
6+ methods	1400
Organic chemistry	
1 - 2 methods	1050
3 - 5 methods	1250
6 - 8 methods	1450

9+ methods	1650
Radiochemistry	
1 - 2 methods	1100
3 - 5 methods	1300
6+ methods	1500
Asbestos	
1 - 2 methods	900
3 - 5 methods	1100
6+ methods	1300

2. Table 2 shows the relationship between the testing categories for fees and the drinking water laboratory certification categories.

Table 2 - Drinking Water Laboratory Certification Categories

Fee Testing Category	Laboratory Certification Category
Microbiological testing	Microbiology (includes coliform, E. coli, heterotrophic bacteria)
Inorganic chemistry, nonmetals testing	Physical/inorganic: aggregate properties (includes turbidity, alkalinity, total dissolved solids, conductivity, pH) Wet chemistry (includes fluoride, nitrate/nitrite, cyanide, sulfate, orthophosphate, pH) Organic aggregate properties (includes DOC, TOC, UV254, Surfactants/SUVA)
Inorganic chemistry, metals testing	Trace metals (includes lead, copper, chromium, beryllium, mercury, barium, cadmium)
Organic chemistry, trace	Organic chemistry (includes pesticides, herbicides, SOC, PCB, THM, VOC, HAA5, carbamates, fumigants)
Radiochemistry	Radiochemistry (includes alpha, beta, radium, gamma, uranium, strontium-89)
Asbestos	Asbestos

K. Additional fees.

1. An additional fee shall be charged to a laboratory:

a. Applying for modification of certification under 1VAC30-41-110.

b. Moving its location when the move requires DCLS to perform an onsite assessment.

c. Requesting reinstatement of certification when DCLS requires an onsite assessment.

2. The fee charged shall be the sum of the total hourly charges for all reviewers plus any onsite assessment cost incurred.

a. An hourly charge per reviewer shall be $61 as of [insert the effective date of this chapter]. DCLS shall revise the hourly charge after the first 12 months following [insert the effective date of this chapter] and every 12-month period thereafter. The hourly charge shall increase or decrease using the Consumer Price Index-Urban (CPI-U) percentage change, average-average for the previous calendar year.

b. The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.

c. If an onsite review is required, travel time and onsite review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

L. Method of payment. Fees shall be paid by check, draft, or postal money order payable to the Treasurer, Commonwealth of Virginia, or submitted electronically, if available, and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee. All fees shall be sent to the following address, or submitted electronically, if available: DCLS, Attn: Lab Certification, 600 North 5th Street, Richmond, VA 23219. Laboratories may also pay fees using credit cards. Laboratories shall fill out the DCLS Fee Payment Form for Virginia Laboratory Certification Programs and send the completed form with the fee.

1VAC30-41-280. (Reserved).

1VAC30-41-290. (Reserved).

Part III
Chemistry

1VAC30-41-300. Personnel.

Drinking water laboratories shall meet the requirements of Chapter III, Section 10 and Chapter IV, Section 1 of the Manual.

1VAC30-41-310. Laboratory facilities.

Drinking water laboratories shall meet the requirements of Chapter IV, Section 2 of the Manual.

1VAC30-41-320. Laboratory equipment and instrumentation.

A. Drinking water laboratories shall meet the requirements set out in the approved methods incorporated by reference into 1VAC30-41-55 and in use by the laboratory.

B. Drinking water laboratories shall meet the requirements of Chapter IV, Section 3 of the Manual.

1VAC30-41-330. General laboratory practices.

A. Drinking water laboratories shall meet the requirements set out in the approved methods incorporated by reference into 1VAC30-41-55 and in use by the laboratory.

B. Drinking water laboratories shall meet the requirements of Chapter IV, Section 4 of the Manual with the exception of Table IV-1.

1VAC30-41-340. Analytical methodology.

A. Laboratories shall meet the sampling and analytical methodology requirements incorporated by reference at 1VAC30-41-55 for primary inorganic chemical contaminants, primary organic chemical contaminants, alternative testing methods for chemistry, and secondary maximum contaminant levels.

B. Laboratories shall meet the requirements of Chapter IV, Section 5.1 of the Manual with the exception of Tables IV-2 through IV-5.

C. A drinking water laboratory shall perform a minimum of five water analyses monthly for each chemical contaminant for which the laboratory is certified in order to maintain certification status or qualify for initial certification.

D. Exceptions to laboratory certification requirements of 1VAC30-41-20 B 2.

1. Laboratory testing for alkalinity, calcium, chlorite, conductivity, disinfectant residual, orthophosphate, pH, silica, temperature, and turbidity for compliance purposes may be performed by laboratories or persons not certified under this chapter but acceptable to VDH-ODW.

2. This testing shall be performed using approved sampling and analytical methodology as incorporated by reference into 1VAC30-41-55 C.

3. Laboratories performing this testing shall meet the requirements of Chapter IV, Section 5.2 of the Manual, with the exception of Tables IV-2 through IV-5.

1VAC30-41-350. Sample collection, handling, and preservation.

A. Drinking water laboratories shall meet the sample container, required preservation, and maximum holding time requirements incorporated by reference at 1VAC30-41-55 for primary inorganic chemical contaminants, primary organic chemical contaminants, alternative testing methods for chemistry, and secondary maximum contaminant levels.

B. Drinking water laboratories shall meet the requirements of Chapter IV, Section 6 of the Manual with the exception of Table IV-6, and the Manual Supplement to Chapter IV, Section 6 of the Manual.

C. Drinking water laboratories shall reject any sample not meeting the criteria of this section and notify the system or individual requesting the analyses.

D. The laboratory shall have a written sample rejection policy covering samples that do not meet sampling requirements.

1VAC30-41-360. Quality assurance.

Drinking water laboratories shall meet the quality assurance and quality control requirements of the following:

1. The approved test methods and associated quality assurance and quality control requirements incorporated by reference into 1VAC30-41-55.

2. Chapter III, Section 11 of the Manual.

3. Chapter IV, Section 7 of the Manual with the exception of Tables IV-7 through IV-10.

4. The Manual Supplement to Chapter III, Section 2 of the Manual.

1VAC30-41-370. Recordkeeping and data reporting.

Drinking water laboratories shall meet the recordkeeping and data reporting requirements of the following:

1. The approved test methods incorporated by reference into 1VAC30-41-55.

2. Chapter IV, Section 8 of the Manual.

1VAC30-41-380. Action response to laboratory results.

Drinking water laboratories shall meet the action response requirement of Chapter IV, Section 9 of the Manual and the requirements of 1VAC30-41-190.

1VAC30-41-390. (Reserved).

Part IV
Microbiology

1VAC30-41-400. Personnel.

Drinking water laboratories shall meet the requirements of Chapter III, Section 10 and Chapter V, Section 1 of the Manual.

1VAC30-41-410. Laboratory facilities.

A. Drinking water laboratories shall meet the requirements of Chapter V, Section 2 of the Manual.

B. The laboratory facilities shall include sufficient space to process and examine samples proportionate with the total work load.

C. The laboratory shall have provisions for decontamination and disposal of microbiological waste.

D. Office areas for clerical work and recordkeeping shall be segregated from laboratory work areas.

1VAC30-41-420. Laboratory equipment and supplies.

Drinking water laboratories shall meet the following requirements:

1. The requirements set out in the approved methods incorporated by reference into 1VAC30-41-55 and in use by the laboratory.

2. The requirements of Chapter V, Section 3 of the Manual.

1VAC30-41-430. General laboratory practices.

Drinking water laboratories shall meet general laboratory practices of the following:

1. The requirements set out in the approved methods incorporated by reference into 1VAC30-41-55 and in use by the laboratory.

2. The requirements of Chapter V, Section 4 of the Manual.

1VAC30-41-440. Analytical methodology.

A. Drinking water laboratories shall meet the sampling and analytical methodology requirements incorporated by reference into 1VAC30-41-55 for microbiology and alternative testing methods for microbiology.

B. Drinking water laboratories shall meet the requirements of Chapter V, Section 5 of the Manual and the Manual Supplement to Chapter V, Section 5 of the Manual unless these requirements conflict with the requirements specified in subsection A of this section.

C. A drinking water laboratory shall perform a minimum of 20 coliform analyses monthly by each coliform method for which it is certified in order to maintain certification status or qualify for initial certification. The minimum number of coliform analyses (20) may be performed on a variety of water sample types collected from different stages of the water treatment process, raw source water, and surface or ground water, as well as drinking water samples collected from a distribution system or private wells.

1VAC30-41-450. Sample collection, handling, and preservation.

A. Laboratories that perform sampling shall meet the sample container, required preservation, and maximum holding time requirements incorporated by reference at 1VAC30-41-55 for microbiology and alternative testing methods for microbiology.

B. Laboratories that perform sampling shall meet the requirements of Chapter V, Section 6 of the Manual and the Manual Supplement to Chapter V, Section 6 of the Manual unless these requirements conflict with the requirements specified in subsection A of this section.

C. Drinking water laboratories shall reject any sample not meeting the sampling criteria of this section and notify the system or individual requesting the analyses.

D. The laboratory shall have a written sample rejection policy covering samples that do not meet sampling requirements.

1VAC30-41-460. Quality assurance.

Drinking water laboratories shall meet the quality assurance and quality control requirements of the following:

1. The approved test methods and associated quality assurance and quality control requirements incorporated by reference into 1VAC30-41-55.

2. Chapter III, Section 11 and Chapter V, Section 7 of the Manual.

3. The Manual Supplement to Chapter III, Section 2 of the Manual.

1VAC30-41-470. Recordkeeping and data reporting.

Laboratories shall meet the recordkeeping and data reporting requirements of the following:

1. The approved test methods incorporated by reference into 1VAC30-41-55.

2. Chapter V, Section 8 of the Manual.

1VAC30-41-480. Action response to laboratory results.

Drinking water laboratories shall meet the requirements of Chapter V, Section 9 of the Manual and the requirements of 1VAC30-41-190.

1VAC30-41-490. (Reserved).

Part V
Radiochemistry

1VAC30-41-500. Radiochemistry.

A. Drinking water laboratories shall meet the sampling and analytical methodology requirements incorporated by reference into 1VAC30-41-55 for radiochemistry and alternative testing methods for radiochemistry.

B. Drinking water laboratories shall meet the requirements of Chapters III and VI of the Manual as follows:

1. Personnel: Chapter III, Section 10 and Chapter VI, Section 1.

2. Laboratory facilities: Chapter VI, Section 2.

3. Laboratory equipment and instrumentation: Chapter VI, Section 3.

4. General laboratory practices: Chapter VI, Section 4.

5. Analytical methods: Chapter VI, Section 5, with the exception of Table VI-1.

6. Sample collection, handling, and preservation: Chapter VI, Section 6, with the exception of Table VI-2.

7. Quality assurance: Chapter III, Section 11 and Chapter VI, Section 7.

8. Recordkeeping and data reporting: Chapter VI, Section 8.

9. Action response to laboratory results: Chapter VI, Section 9 and the requirements of 1VAC30-41-190.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC30-41)

Application for Virginia Certification Safe Drinking Water Program, DGS-21-109 (rev. 5/30/13).

Fee Payment Form for Virginia Laboratory Certification Programs, DGS-35-232 (rev. 1/14/11).

DOCUMENTS INCORPORATED BY REFERENCE (1VAC30-41)

Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures Quality Assurance, Fifth Edition, January 2005 (EPA-815-R-05-004).

Chapters I through IV

Chapters V and VI

Appendices

Supplement 1 to the Fifth Edition of the Manual for the Certification of Laboratories Analyzing Drinking Water, June 2008 (EPA 815-F-08-006).

VA.R. Doc. No. R10-2245; Filed May 28, 2013, 10:33 a.m.

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TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Proposed Regulation

Title of Regulation: **3VAC5-20. Advertising (amending 3VAC5-20-30).**

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 16, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Chapter 728 of the 2011 Acts of Assembly and Chapters 760 and 818 of the 2012 Acts of Assembly amended § 4.1-111 of the Code of Virginia to require that the Alcoholic Beverage Control promulgate regulations establishing reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages. While the promulgation of regulations is mandatory, most details are discretionary, although the statute contains more specific limitations on where billboard signs advertising alcoholic beverages may be placed.

Purpose: This action carries out the mandate of Chapter 728 of the 2011 Acts of Assembly and Chapters 760 and 818 of the 2012 Acts of Assembly, which require the Alcoholic Beverage Control Board to promulgate regulations to establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages The legislation specifies provisions that must be included in such regulations restricting where outdoor advertising signs may be placed.

The Alcoholic Beverage Control Board has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens because regulation of alcoholic beverage advertising is necessary to ensure that such advertising does not encourage over-consumption of alcoholic beverages, nor does it encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold.

Substance: The proposed action amends 3VAC5-20-30 by deleting most of the existing language, which specifies certain numbers of signs, their placement, and content, for various categories of alcoholic beverage industry members. In its place would be four paragraphs that (i) prohibit the use of persons consuming alcohol, cartoon characters, or persons under the legal drinking age in outdoor alcoholic beverage advertising; (ii) prohibit alcoholic beverage advertising within 500 feet of religious institutions, schools, recreational facilities, or residences, with measurements as defined in the Code of Virginia; (iii) prohibit outdoor alcoholic beverage advertising on property zoned for agricultural use or unzoned; and (iv) require that outdoor alcoholic beverage advertising comply with Virginia Department of Transportation laws and regulations. Three other paragraphs prohibit manufacturers, importers, or wholesalers from providing outdoor advertising to retailers or engaging in cooperative advertising with retailers, and prohibit manufacturers or importers from requiring wholesalers to engage in outdoor advertising.

Issues: The primary advantage to the public and regulated businesses is the opportunity for increased sharing of information about lawful products. The amended regulation would provide fewer restrictions on commercial speech. The new provisions would be easier to comply with and to enforce. Some members of the public would find additional alcohol advertising or additional outdoor advertising of any nature to be a disadvantage, out of concern for substance abuse or esthetics. The regulatory action poses no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to a consent decree between the Office of the Attorney General and the Lamar Company, LLC signed in January, 2011, as well as Chapter 728 of the 2011 Acts of the Assembly and Chapter 760 of the 2012 Acts of the Assembly, the Alcoholic Beverage Control Board (ABC) proposes to amend its advertising regulations.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. Prior to 2011, restrictions on advertising set in the Code of Virginia and in the Alcoholic Beverage Control (ABC) Board's regulations prohibited most forms of outdoor alcoholic beverage advertisement except for advertising within "stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events." A consent decree agreed to by both Lamar Company, LLC (a company that owns numerous outdoor advertising billboards in Virginia and other states) and the Office of the Attorney General suspended provisions of 3VAC5-20-30 and agreed that "no alcoholic beverage advertising shall depict persons consuming alcoholic beverages or use cartoon characters in any way or use persons who have not attained the minimum drinking age as models or actors" and that "(n)o outdoor alcoholic beverage advertising shall be placed within 500 feet of a church or synagogue; public, private or parochial school; college or university; or public or private playground or similar recreational facilities."

After this consent decree was entered in January, 2011, the General Assembly passed legislation that dealt with alcoholic beverage advertising in 2011 and 2012. Chapter 728 of the 2011 Acts of Assembly requires the board to promulgate regulations that establish reasonable time, place, and manner restrictions on alcoholic beverage outdoor advertising. Chapter 760 of the 2012 Acts of Assembly enacted Virginia Code § 4.1-112.2 which places specific limits on outdoor alcoholic beverage advertising (including specific measurement requirements for determining if advertising comported with the 500 foot restrictions in the consent decree), allows ABC to grant permits for variances, and requires outdoor advertising to comply with both ABC regulations and those adopted by the Commonwealth Transportation Board. This chapter also created Virginia Code § 33.1-377.1 which provides for penalties for violations of the outdoor advertising law. The 2012 changes were characterized as emergency legislation "in force from its passage," thereby making them effective on April 18, 2012.

ABC now proposes to amend its advertising regulations so that they are consistent with the consent decree as well as new legislation. The proposed regulations will prohibit advertising that "depict persons consuming alcoholic beverages, use cartoon characters in any way or use persons who have not attained the minimum drinking age as models or actors," will require that outdoor advertising comply with rules set out in Virginia Code § 4.1-112.2 (as modified by Chapter 760 of the 2012 Acts of the Assembly) and will, also pursuant to Chapter 760, prohibit outdoor advertising on property zoned exclusively for agricultural or residential uses or on unzoned property. The proposed regulations will also prohibit any advertising that would not be allowed by the Tied House regulations (3 VAC 5-30) or the Franchise Acts (§ 4.1-400 et seq. and § 4.1-500 et seq.).

Because of the consent decree mentioned above, and because of the resultant legislation, these proposed regulations are much less restrictive on alcoholic beverage advertising than were pre-2011 regulations. It does not appear that the proposed regulations add any more restrictions than are required by the Code of Virginia. ABC's licensees are likely to benefit from both a less restrictive advertising environment and from ABC's efforts to make these regulations consistent with the Code of Virginia so that inconsistencies do not cause confusion. No affected entity is likely to incur costs on account of these proposed regulations.

Businesses and Entities Affected. ABC reports that they license 16,000 alcoholic beverage manufacturers, wholesalers and retailers that will all be affected by these proposed regulations; 90% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

This proposed action carries out the mandate of Chapter 728 of the 2011 Acts of Assembly and Chapters 760 and 818 of the 2012 Acts of Assembly, which require the Alcoholic Beverage Control Board to promulgate regulations establishing reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages. The proposed amendments replace most of the existing language with four provisions that (i) prohibit the use of persons consuming alcohol, cartoon characters, or persons under the legal drinking age in outdoor alcoholic beverage advertising; (ii) prohibit alcoholic beverage advertising within 500 feet of religious institutions, schools, recreational facilities, or residences, with measurements as defined in the Code of Virginia; (iii) prohibit outdoor alcoholic beverage advertising on property zoned for agricultural or residential use or unzoned; and (iv) require that outdoor alcoholic beverage advertising comply with Virginia Department of Transportation laws and regulations. Other proposed provisions prohibit manufacturers, importers, or wholesalers from providing outdoor advertising to retailers or engaging in cooperative advertising with retailers, and prohibit manufacturers or importers from requiring wholesalers to engage in outdoor advertising.

3VAC5-20-30. Advertising; exterior.

Outdoor alcoholic beverage advertising shall comply with 3VAC5-20-10~~,~~ and shall be limited ~~to signs and is otherwise discretionary, except~~ as follows:

~~1. Manufacturers and wholesalers, including wineries and farm wineries:~~

~~a. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;~~

~~b. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;~~

~~c. If the establishment is a winery also holding a retail off premises winery license or is a farm winery, additional directional signs with advertising limited to trade names, brand names, the terms "farm winery" or "winery," and tour information, may be erected in accordance with state and local rules, regulations and ordinances; and~~

~~d. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.~~

~~2. Retailers, including mixed beverage licensees, other than carriers and clubs:~~

~~a. No more than two signs at the establishment and, in the case of establishments at intersections, three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment;~~

~~b. Signs may not include any reference to or depiction of "Happy Hour," or references or depictions of similar import, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages, except that, notwithstanding the provisions of 3VAC5-50-160 B 8, a retail licensee may post one two-dimensional sign not exceeding 17" x 22", attached to the exterior of the licensed premises, limited in content to the terms "Happy Hour" or "Drink Specials" and the time period within which alcoholic beverages are being sold at reduced prices; and~~

~~c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.~~

~~3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.~~

1. No outdoor alcoholic beverage advertising shall depict persons consuming alcoholic beverages, use cartoon characters in any way, or use persons who have not attained the minimum drinking age as models or actors.

2. No outdoor alcoholic beverage advertising shall be placed in violation of § 4.1-112.2 of the Code of Virginia.

3. No outdoor alcoholic beverage advertising shall be placed on property zoned exclusively for agricultural or residential uses, or on unzoned property.

4. All outdoor alcoholic beverage advertising must also comply with the provisions of Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 of the Code of Virginia and the regulations of the Virginia Department of Transportation promulgated pursuant thereto.

5. No alcoholic beverage manufacturer, importer, or wholesale licensee may sell, rent, lend, buy for, or give to any retail licensee any outdoor alcoholic beverage advertising, any billboard placements for such advertising, or in any other way confer on any retail licensee anything of value that constitutes outdoor alcoholic beverage advertising.

6. No alcoholic beverage manufacturer, importer, or wholesale licensee may engage in cooperative advertising, as defined in 3VAC5-30-80, on behalf of any retail licensee.

7. No alcoholic beverage manufacturer or importer may require a wholesale licensee to place outdoor alcoholic beverage advertising or exercise control over the funds of a wholesale licensee for any purpose, including but not limited to the purchase of outdoor alcoholic beverage advertising.

VA.R. Doc. No. R12-2956; Filed May 29, 2013, 11:51 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-10, 4VAC20-270-51, 4VAC20-270-56).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: May 29, 2013, through June 26, 2013.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

This emergency action clarifies that individual and vessel harvest and possession limits for commercial or recreational crabbing in Virginia are daily limits.

4VAC20-270-10. Purpose.

The purpose of this emergency chapter is to allow for the conservation and rebuilding of the crab resource and to improve the enforceability of other laws pertaining to crabbing.

4VAC20-270-51. ~~Harvester~~ Daily commercial harvester and daily vessel harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than 3 bushels of crabs.

B. From March 16, 2013, through November 30, 2013, any harvester legally licensed for a crab pot license, as defined in 4VAC20-270-50 B, shall be limited to the following daily harvest and possession limits shown below:

1. 27 bushels, or 9 barrels, of crabs, if licensed for up to 85 crab pots.

2. 32 bushels, or 10 barrels and 2 bushels, if licensed for up to 127 crab pots.

3. 38 bushels, or 12 barrels and 2 bushels, if licensed for up to 170 crab pots.

4. 45 bushels, or 15 barrels, if licensed for up to 255 crab pots.

5. 55 bushels, or 18 barrels and 1 bushel, if licensed for up to 425 crab pots.

C. When multiple harvesters are on board any vessel, that vessel's daily harvest limit and possession limit shall be equal to only one harvest limit and possession limit, as described in 4VAC20-270-51 B, and that daily limit shall correspond to the highest harvest limit and possession limit of only one licensee on board that vessel.

D. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, Commercial Fisherman Registration License number, date, and amount of bushels or barrels of crabs to be sold.

E. If any police officer finds crabs in excess of any lawful daily bushel limit, ~~or~~ barrel limit, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees ~~who possess~~ in possession of that quantity of crabs in excess ~~over~~ of any ~~single or combined~~ lawful daily harvest limit or possession limit. The refusal to return crabs, in excess of any lawful daily harvest limit or possession limit, to the water shall constitute a separate violation of this chapter.

F. The bushel and barrel limits described in this chapter replace any provisions for bushel limits described in previous 4VAC20-300.

4VAC20-270-56. ~~Recreational~~ Daily recreational harvest and possession limit.

It shall be unlawful to take, by using an unlicensed dip net, ~~or~~ hand line, or two crab pots, or to harvest or possess, for personal use aboard any vessel, more than one bushel of hard crabs or two dozen peeler crabs per day.

VA.R. Doc. No. R13-3764; Filed May 29, 2013, 1:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30, 4VAC20-1090-40).**

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

Effective Date: July 1, 2013.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish (i) oyster resource user fees for anyone growing, harvesting, shucking, packing, or shipping oysters for commercial purposes; (ii) licenses for buyers' places of business or trucks used for the purchase of oysters from harvesters; (iii) licenses and fees for menhaden purse seine vessels, as already established in the Code of Virginia; and (iv) a recreational saltwater license and fee for nonresident individuals age 65 and older.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year.

1. COMMERCIAL LICENSES.	
Commercial Fisherman Registration License	$190.00
Commercial Fisherman Registration License for a person 70 years or older	$90.00
Delayed Entry Registration.	$190.00
Delayed Entry Registration License for a person 70 years or older	$90.00
Seafood Landing License for each boat or vessel	$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	$83.00
Seafood Buyer's License -- For each boat or motor vehicle	$63.00
Seafood Buyer's License -- For each place of business	$126.00
Clam Aquaculture Product Owner's Permit	$10.00
Oyster Aquaculture Product Owner's Permit	$10.00
Clam Aquaculture Harvester's Permit	$5.00
Oyster Aquaculture Harvester's Permit	$5.00
Nonresident Harvester's License	$444.00
OYSTER RESOURCE USER FEES	
Any licensed commercial fisherman harvesting oysters by hand	$50.00
For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	$300.00
On any business shucking or packing no more than 1,000 gallons of oysters	$500.00
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	$1,000.00
On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	$2,000.00
On any business shucking or packing more than 25,000 gallons of oysters	$4,000.00
On any oyster buyer using a single truck or location	$100.00
On any oyster buyer using multiple trucks or locations	$300.00
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	$50.00
OYSTER HARVESTING ~~AND,~~ SHUCKING, AND BUYERS LICENSES	
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	$50.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River,	$100.00

for a single place of business with multiple boats or motor vehicles used for buying oysters	
For each person taking oysters by hand, or with ordinary tongs	$10.00
For each single-rigged patent tong boat taking oysters	$35.00
For each double-rigged patent tong boat taking oysters	$70.00
Oyster Dredge Public Ground	$50.00
Oyster Hand Scrape	$50.00
To shuck and pack oysters, for any number of gallons under 1,000	$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	$290.00
To shuck and pack oysters, for 200,000 gallons or over	$456.00
BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
For each person taking or catching crabs by dip nets	$13.00
For ordinary trotlines	$13.00
For patent trotlines	$51.00
For each single-rigged crab-scrape boat	$26.00
For each double-rigged crab-scrape boat	$53.00
For up to 210 peeler pots	$36.00
For up to 20 tanks and floats for shedding crabs	$9.00
For more than 20 tanks or floats for shedding crabs	$19.00
For each crab trap or crab pound	$8.00

CRAB POT LICENSES	
For up to 85 crab pots	$48.00
For over 85 but not more than 127 crab pots	$79.00
For over 127 but not more than 170 crab pots	$79.00
For over 170 but not more than 255 crab pots	$79.00
For over 255 but not more than 425 crab pots	$127.00
HORSESHOE CRAB AND LOBSTER LICENSES	
For each person harvesting horseshoe crabs by hand	$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	$166.00
CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	$24.00
For each single-rigged patent tong boat taking clams	$58.00
For each double-rigged patent tong boat taking clams	$84.00
For each boat using clam dredge (hand)	$19.00
For each boat using clam dredge (power)	$44.00
For each boat using hydraulic dredge to catch soft shell clams	$83.00
For each person taking surf clams	$124.00
CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	$58.00
For each person taking channeled whelk by conch pot	$51.00
FINFISH HARVESTING LICENSES	
Each pound net	$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	$24.00

All other gill nets up to 600 feet	$16.00
All other gill nets over 600 feet and up to 1,200 feet	$24.00
Each person using a cast net or throw net or similar device	$13.00
Each fyke net head, weir, or similar device	$13.00
For fish trotlines	$19.00
Each person using or operating a fish dip net	$9.00
On each haul seine used for catching fish, under 500 yards in length	$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	$146.00
For each person using commercial hook and line	$31.00
For each person using commercial hook and line for catching striped bass only	$31.00
~~On each boat or vessel under 70 gross tons fishing with purse net, per gross ton, but not more than $249~~	~~$4.00~~
~~On each boat or vessel over 70 gross tons fishing with purse net, per gross ton. Provided the maximum license fee for such vessels shall not be more than $996~~	~~$8.00~~
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	$996.00
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	$996.00
For up to 100 fish pots or eel pots	$19.00
For over 100 but not more than 300 fish pots or eel pots	$24.00
For over 300 fish pots or eel pots	$62.00

2. COMMERCIAL GEAR FOR RECREATIONAL USE.	
Up to five crab pots	$36.00
Crab trotline (300 feet maximum)	$10.00
One crab trap or crab pound	$6.00
One gill net up to 300 feet in length	$9.00
Fish dip net	$7.00
Fish cast net	$10.00
Up to two eel pots	$10.00
3. SALTWATER RECREATIONAL FISHING LICENSE.	
Individual, resident	$17.50
Individual, nonresident	$25.00
Temporary 10-Day, resident	$10.00
Temporary 10-Day, nonresident	$10.00
Recreational boat, resident	$48.00
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	$76.00
Head Boat/Charter Boat, resident, six or less passengers	$190.00
Head Boat/Charter Boat, nonresident, six or less passengers	$380.00
Head Boat/Charter Boat, resident, more than six passengers, plus $5.00 per person, over six persons	$190.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus $5.00 per person, over six persons	$380.00
Rental Boat, resident, per boat, with maximum fee of $703	$14.00
Rental Boat, nonresident, per boat, with maximum fee of $1270	$18.00
Commercial Fishing Pier (Optional)	$632.00
Disabled Resident Lifetime Saltwater License	$10.00
Disabled Nonresident Lifetime Saltwater License	$10.00
Reissuance of Saltwater Recreational Boat License	$5.00
Combined Sportfishing License to fish in all inland waters and tidal waters of the Commonwealth during open season:	

Residents	$35.00
Nonresidents	$60.50
Combined Sportfishing Trip License to fish in all inland waters and tidal waters of the Commonwealth during open season, for five consecutive days:	
Residents	$21.00
Nonresidents	$26.00
LIFETIME SALTWATER RECREATIONAL FISHING LICENSES	
Individual Resident Lifetime License	$276.00
Individual Nonresident Lifetime License	$500.00
Individual Resident Lifetime License age 45 - 50	$132.00
Individual Nonresident Lifetime License age 45 - 50	$240.00
Individual Resident Lifetime License age 51 - 55	$99.00
Individual Nonresident Lifetime License 51 - 55	$180.00
Individual Resident Lifetime License age 56 - 60	$66.00
Individual Nonresident Lifetime License age 56 - 60	$120.00
Individual Resident Lifetime License age 61 - 64	$35.00
Individual Nonresident Lifetime License age 61 - 64	$60.00
Individual Nonresident Lifetime License age 65 and older	$5.00

4VAC20-1090-40. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this ~~regulation~~ chapter, except as provided in subsection B of this section, shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this ~~regulation~~ chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. As set forth in § 28.2-549 of the Code of Virginia, any person willfully failing to pay oyster resource user fees to the commission shall be guilty of a Class 1 misdemeanor.

VA.R. Doc. No. R13-3762; Filed June 3, 2013, 11:43 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Emergency Regulation

Titles of Regulations: **8VAC20-30. Regulations Governing Adult High School Programs (amending 8VAC20-30-20).**

8VAC20-680. Regulations Governing the General Achievement Diploma (repealing 8VAC20-680-10, 8VAC20-680-20).

Statutory Authority: §§ 22.1-224 and 22.1-253.13:4 of the Code of Virginia.

Effective Dates: July 17, 2013, through July 16, 2014.

Agency Contact: Anne Wescott, Assistant Superintendent for Policy and Communication, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2403, or email anne.wescott@doe.virginia.gov.

Preamble:

Chapters 454 and 642 of the 2012 Acts of Assembly amended § 22.1-253.13:4 of the Code of Virginia to strengthen postsecondary education and workplace readiness opportunities for all students and to consolidate the number of Board of Education-approved diplomas. The legislation includes a second enactment clause that requires the board to promulgate emergency regulations to implement the provisions of this legislation. The emergency regulations provide for a foundation for a quality education for adult students receiving a general achievement adult high school diploma so they may be successful and productive citizens and are prepared for postsecondary education and for the workplace.

The legislation eliminates the general achievement diploma by folding it into the adult high school diploma, which is renamed the general achievement adult high school diploma. The legislation adds a requirement that adult students would need to earn a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment in order to be awarded the diploma. The legislation further provides that the general achievement adult high school diploma would include the following requirements:

1. Achievement of a passing score on the GED examination;

2. Successful completion of an education and training program designated by the Board of Education;

3. Achievement of a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency

assessment, or the Virginia workplace readiness skills assessment; and

4. Completion of other requirements as may be established by the board.

The emergency regulations are designed to (i) enhance preparedness for the workplace and for postsecondary education and (ii) strengthen educational and career opportunities for adult students. They also support expanded learning opportunities for adult students by enhancing workplace skills through the attainment of a career and technical education credential for adult students earning the general achievement adult high school diploma.

8VAC20-30-20. Minimum requirements for adult high school programs.

Adult high school programs are not part of the 9 through 12 high school program and shall meet the following minimum requirements:

1. Age. ~~An adult student shall be at least 18 years of age. Under circumstances which local school authorities consider justifiable, students of school age may enroll in courses offered by the adult high school. Only in exceptional circumstances should school officials permit a school aged individual enrolled in grades 9 through 12 to earn credits toward high school graduation in adult classes. All educational alternatives must have been considered prior to placing an enrolled student in an adult class. Such students would be able to earn a diploma, as provided in 8VAC20-131-50, but would not be eligible to earn an adult high school diploma.~~ Only those students not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia shall be enrolled in an adult high school program.

2. Credit.

a. Satisfactory completion of 108 hours of classroom instruction in a subject shall constitute sufficient evidence for one unit of credit toward a high school diploma.

b. When, in the judgment of the principal or the superintendent, an adult not regularly enrolled in the grades 9 through 12 high school program is able to demonstrate by examination or other objective evidence, satisfactory completion of the work, he may receive credit in accordance with policies adopted by the local school board. It is the responsibility of the school issuing the credit to document the types of examinations employed or other objective evidence used, the testing or assessment procedures, and the extent of progress in each case.

c. Credits earned in adult high school programs shall be transferable as prescribed in the Regulations Establishing Standards for Accrediting Public Schools in Virginia within the sponsoring school division and shall be transferable to public secondary schools outside of the sponsoring school division.

3. Diplomas.

a. A diploma, as provided in 8VAC20-131-50, shall be awarded to an adult student who completes all requirements of the diploma regulated by the Board of Education, with the exception of health and physical education requirements, in effect at the time he will graduate.

b. An adult high school diploma shall be awarded to an adult student who completes the course credit requirements in effect for any Board of Education diploma, with the exception of health and physical education course requirements, at the time he first entered the ninth grade. The requirement for specific assessments may be waived if the assessments are no longer administered to students in Virginia public schools.

c. An adult high school diploma shall be awarded to an adult student who demonstrates through applied performance assessment full mastery of the National External Diploma Program ~~Generalized~~ Competencies ~~Correlated with CASAS Competencies, 1996~~, version 5.0, January 2013, a CASAS program, as promulgated by the American Council on Education and validated and endorsed by the United States Department of Education.

d. ~~A General Achievement Diploma, as provided in 8VAC20-680, shall be awarded to an adult student who completes all requirements of the diploma.~~ A general achievement adult high school diploma shall be awarded to a student who is not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia and who:

(1) Successfully completes the general educational development (GED) program that meets the requirements of the Board of Education's Regulations Governing General Education Development Certificates (8VAC20-360) and earns a GED certificate;

(2) Earns a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia Workplace Readiness Skills Assessment; and

(3) Successfully completes the following courses that incorporate or exceed the applicable Standards of Learning:

Discipline Area	Standard Units of Credit Required
English	4
Mathematics	3

Science	2
History and Social Sciences	2
Electives	9
TOTAL	20

Courses completed to satisfy the requirements in mathematics and science shall include content in courses that incorporate or exceed the content of courses approved by the Board of Education to satisfy any other board-recognized diploma.

Courses completed to satisfy the history/social science requirements shall include one unit of credit in Virginia and U.S. history and one unit of credit in Virginia and U.S. government in courses that incorporate or exceed the content of courses approved by the Board of Education to satisfy any other board-recognized diploma.

Courses completed to satisfy the electives requirement shall include at least two sequential electives in an area of concentration or specialization, which may include career and technical education and training.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-30)

~~National External Diploma Program Generalized Competencies Correlated with CASAS Competencies, Comprehensive Adult Student Assessment System EDP/CASAS, 1996~~ National External Diploma Program Competencies, version 5.0, January 2013, a CASAS program, as promulgated by the American Council on Education and validated and endorsed by the U.S. Department of Education.

VA.R. Doc. No. R13-3303; Filed May 22, 2013, 2:19 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Waste Management Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-40. Administrative Procedures for Hazardous Waste Facility Site Certification (amending 9VAC20-40-60, 9VAC20-40-80, 9VAC20-40-130, 9VAC20-40-140).**

Statutory Authority: §§ 10.1-1434 and 10.1-1436 of the Code of Virginia.

Effective Date: July 17, 2013.

Agency Contact: Debra A. Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Summary:

The amendments allow notifications associated with siting of new hazardous waste facilities to be sent via postal or electronic mail. The amendments allow for electronic or postal mail notifications to interested individuals regarding (i) any notice of intent to file an application for a certification of site approval, (ii) a briefing meeting to discuss such an application, (iii) the public hearing associated with such an application, (iii) the decision of the Director of the Department of Environmental Quality to allow a petitioner to become a party to such a hearing regarding an application, and (iv) the final decision of approval or denial of the application. The amendments are required by statutory changes to § 10.1-1183 of the Code of Virginia by Chapter 348 of the 2013 Acts of Assembly.

9VAC20-40-60. Contents of the notice of intent.

A. After December 31, 1984, any person may submit to the board a notice of intent to file an application for a certification of site approval. The notice shall contain:

1. Name and address of the applicant;

2. A copy of the property deed, option, or other document giving right, title, or interest to the proposed site;

3. A description of the proposed facility including a description based on its operating characteristics;

4. A USGS map showing the location of the property at a scale of one inch = 2,000 feet;

5. Names and addresses of all owners of property adjacent to the proposed site; and

6. Any state agency filing a notice of intent shall include a statement explaining why the Commonwealth desires to build a hazardous waste facility and how the public interest will be served by that.

B. Determination of completion of notice of intent. The director will review the notice of intent and determine within 45 days of its receipt whether the notice of intent is complete. If the director determines that the notice of intent is incomplete, the director shall so advise the applicant, specifying the information needed to complete the notice and designating a deadline for the correction of any deficiencies.

C. Distribution of notice of intent. Upon the determination that a notice of intent is complete, the board, at the applicant's expense, shall promptly:

1. Deliver by certified, return receipt mail a copy of the notice of intent with a copy of the Act, a copy of this

chapter, and notice of the date, time, location and purpose of the briefing meeting to:

a. The governing body of each host community;

b. The governing body of each affected community;

c. State legislators elected from the areas in which the host community and affected communities are located;

d. The regional planning district commissions of the host community and the affected communities; and

e. Each person owning property immediately adjoining the site of the proposed facility.

2. Have an informative description of the notice published in a newspaper of general circulation in each host community once each week for four successive weeks. The description shall include the name and address of the applicant, a description of the proposed facility and its location, the places and times where the notice of intent may be examined, the address and telephone number of the board or other state agency from which information may be obtained, and the date, time and location of the initial public briefing meeting on the notice.

3. Copies of the notice of intent will be mailed, by electronic or postal delivery, to any person who has specifically requested such notice.

9VAC20-40-80. Briefing meeting.

A. Not more than 75 nor less than 60 days after the delivery of the notice of intent to the host community, the board shall conduct a briefing meeting in or in reasonable proximity to the host community. Notice of the date, time, place and purpose of the briefing session shall be prepared by the board and shall accompany the notice of intent delivered pursuant to § 10.1-1439 of the Code of Virginia, and be included in the notice published pursuant to § 10.1-1439 of the Code of Virginia. At least one representative of the applicant shall be present at the briefing meeting. The primary purpose of the briefing meeting will be to provide information on the proposed site and facility and to receive comments, suggestions and questions on them from the public.

B. The board shall select from among its membership a briefing officer who will be responsible for conducting the meeting as follows:

1. The briefing officer will call the meeting to order and explain the purpose of the briefing;

2. The applicant shall be allowed to give a presentation describing the proposal and to respond to questions;

3. Persons asking questions shall be requested to state their names, addresses, and interests in the project;

4. The briefing officer shall conduct the meeting in an orderly manner while ensuring that all interested parties present are as fully briefed as possible on the proposal; and

5. A stenographic or electronic record shall be made of all briefing meetings. A transcript of the meeting, together with copies of any documents submitted at the briefing, shall be made available for inspection at the office of the board and host community during normal working hours.

C. If the board conducts additional briefing meetings, notice of such meetings shall be provided as follows:

1. Notice of the date, time, place and purpose of the meeting is delivered in writing to the applicant, each member of the governing body of the host community, and to all owners of property adjoining the proposed site at least 15 days in advance of the meeting;

2. Such notice is published once each week for at least two successive weeks in a newspaper of general circulation in the host community;

3. Such notice is broadcast over one or more radio stations within the area to be affected by the subject of the notice;

4. Such notice is mailed, by electronic or postal delivery, to each person who has asked to receive notice; and

5. Such notice is disseminated by any additional means the board deems appropriate.

9VAC20-40-130. Public hearing on draft certification of site approval.

A. The board shall conduct a public hearing on the draft certification not less than 15 nor more than 30 days after the first publication of notice. The hearing shall be conducted in the host community.

B. Notice of the hearing shall be made at the applicant's expense and shall:

1. Provide for public participation by sending a copy of the notice by certified, return receipt mail to the following:

a. The governing body of the host community;

b. The governing body of the affected communities;

c. Legislators elected from the areas in which the host community is located and the affected communities are located;

d. The regional planning district commissions of the host community and affected communities;

e. Persons owning property adjoining the site of the proposed facility.

f. The applicant.

g. Any person who has been designated a party pursuant to 9VAC20-40-130 D.

2. In addition to the requirements imposed by paragraph 1, in accordance with § 10.1-1447 of the Code of Virginia, the notice shall be disseminated:

a. By publication once each week for two successive weeks in a newspaper of general circulation within the area to be affected by the subject of the notice;

b. By broadcast over one or more radio stations within the area to be affected by the subject of the notice;

c. By mail, electronic or postal delivery, to each person who has asked to receive notice; and

d. By such additional means as the board deems appropriate.

Every notice shall provide a description of the subject for which notice is made and shall include the name and telephone number of a person from whom additional information may be obtained.

3. Provide that the contents of such notice include:

a. A brief description of the terms and conditions of the draft certification;

b. Information describing the date, time, place and purpose of the hearing;

c. The location where the draft certification may be reviewed;

d. The name, address and telephone number of an official designated by the board to receive written comments of the draft certification;

e. A brief description of the rules and procedures to be followed at the hearing and the time for receiving comments; and

f. Any such information as the board deems appropriate.

C. Designation and powers of hearing officer.

1. The public hearing held pursuant to these procedures will be conducted by a hearing officer designated by the board.

2. The hearing officer shall conduct the hearing in an orderly and expeditious manner, and shall hold all powers necessary to those ends, including, but not limited to, the power to do the following:

a. Prescribe the methods and procedures to be used in the development of evidentiary facts and the presentation of evidence by the parties, including the issuance of prehearing orders setting forth the issues for hearing and establishing deadlines for the filing of written testimony and exhibits;

b. Impose reasonable limitations on the time permitted for oral testimony;

c. Consolidate the presentation of factual data, arguments and proof to avoid repetitive presentation of them;

d. Administer oaths and affirmations;

e. Receive probative evidence, rule upon offers of proof and, upon his own motion or the objection of any party, exclude irrelevant, immaterial, insubstantial or repetitive proofs, rebuttal or cross-examination;

f. Examine witnesses;

g. Hold prehearing conferences for the settlement determination, simplification or stipulation of issues and facts by consent;

h. Rule on procedural matters; and

i. Issue subpoenas and subpoenas duces tecum in accordance with § 2.2-4022 of the Code of Virginia.

3. Rulings of the hearing officer on the admissibility of evidence or testimony, on the propriety or conduct of cross-examination, and on any and all procedural matters shall appear in the hearing record and shall control further proceedings in the hearing. Parties shall be presumed to have taken objection to any adverse ruling, and no objection shall be considered waived by further participation on the hearing.

D. Parties; rights of parties; petition to become a party.

1. The following persons are entitled to become parties to the public hearing conducted pursuant to this section:

a. The applicant;

b. The host community, acting through its governing body; and

c. Any person owning land adjoining the site of the proposed facility.

2. In addition to the above named parties, any person whose significant interest will be adversely affected by the decision of the board may file a petition to become a party to the hearing. The following procedures apply to such petitions:

a. The petition to become a party must be received by the board at least 10 days prior to the scheduled hearing date.

b. The petition shall contain the following:

(1) The names and addresses of the petitioner, the petitioner's counsel (if any) and all persons for whom the petitioner is acting as a representative;

(2) A statement setting forth the interest of the petitioner in the matter;

(3) A statement by the petitioner that, should his petition be granted, the petitioner will be available, without cost to any other party, to appear at the hearing; and

(4) A statement by the petitioner explaining how his interests would not be adequately represented by existing parties to the hearing.

c. The director shall acknowledge the receipt of all petitions to become a party.

d. The director shall consider all petitions filed in accordance herewith, and shall grant those petitions that both:

(1) Raise one or more genuine substantial issues in the petition which, if resolved adversely to the petitioner, would result in an injury to a significant interest of the petitioner; and

(2) Adequately describe how the petitioner's interest is not represented by an existing party to the hearing.

e. The director shall notify the petitioner, and all other parties, of his decision to grant or deny petition to become a party by mail, electronic or postal delivery, at least five days prior to the scheduled hearing date. The decision of the director in no way limits the rights of

judicial review granted under § 10.1-1433 et seq. of the Code of Virginia.

3. The rights of the parties to the hearing shall be limited to those enumerated in this chapter and the Act.

E. Evidence at the hearing.

1. Parties to the hearing may present direct and rebuttal evidence in written and oral form, as the hearing officer may direct.

2. The hearing officer shall admit all relevant, competent and material evidence offered by the parties but shall exclude evidence which he determines to be repetitive, irrelevant, immaterial or otherwise inadmissible.

3. Whenever any evidence or testimony is excluded by the hearing officer as inadmissible, so much of the excluded material as is in written form shall remain in the record as an offer of proof, and shall be marked "excluded" by the hearing officer. Where oral testimony is excluded, the party seeking to introduce it may make an offer of proof in the form of a brief descriptive statement for the record.

4. Any other interested person may be given an opportunity to testify during the hearing. The hearing officer shall allow such testimony to be heard as is not irrelevant, immaterial, insubstantial or repetitive. Any interested person who so testifies shall be sworn and subject to cross-examination as prescribed in this section.

F. Hearing record.

1. The hearing officer shall assemble a hearing record after the close of the hearing.

The hearing record shall consist of:

a. A transcript of the hearing, and any exhibits admitted in evidence;

b. A copy of the final impact statement;

c. A copy of the application for certification of site approval;

d. Reports of any consultants hired by the board that have been made available to the parties prior to the hearing;

e. A copy of the draft certification of site approval; and

f. A summary of the record, if the hearing officer so desires.

2. Within 15 days after the close of the hearing, the hearing officer shall deliver a copy of the hearing record to each member of the board.

Part IV
Certification and Approval of Site

9VAC20-40-140. Final decision on certification of site approval.

A. Within 45 days after the close of the public hearing, the board shall meet within or in close proximity to the host community and shall vote to issue or deny the certification of site approval. The board may include in the certification any terms and conditions which it deems necessary and appropriate to protect and prevent injury or adverse risk to health, safety, welfare, the environment and natural resources. At least seven days notice of the date, time, place and purpose of the meeting shall be made in the manner provided in § 10.1-1447 of the Code of Virginia. No testimony or evidence will be received at the meeting.

B. The board shall grant the certification of site approval if it finds:

1. That the terms and conditions of it will protect and prevent injury or unacceptable adverse risk to health, safety, welfare, the environment and natural resources;

2. That the facility will comply and be consistent with the criteria promulgated by the board; and

3. That the applicant has made reasonable and appropriate efforts to reach a siting agreement with the host community including, though not limited to, efforts to mitigate or compensate the host community and its residents for adverse economic effects, if any, of the facility.

C. The board's decision to grant or deny certification will be based on the hearing record and shall be accompanied by the written findings of fact and conclusions upon which the decision was based. The board shall provide the applicant and the governing body of the host community with copies of the decision, together with the findings and conclusions, by certified mail in accordance with § 10.1-1183 of the Code of Virginia.

D. The grant or denial of certification constitutes final action by the board.

VA.R. Doc. No. R13-3655; Filed May 20, 2013, 9:49 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (amending 9VAC20-70-210).**

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia; 40 CFR Part 258.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 17, 2013.

Effective Date: August 1, 2013.

Agency Contact: Debra A. Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Specifically, § 10.1-1410 of the Code of Virginia authorizes the board to promulgate regulations that ensure that, if a solid waste treatment, transfer, or disposal facility is abandoned, the costs associated with protecting the public health and

safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

Purpose: The rationale for this regulatory action is to provide clarity and simplify the financial test requirements for local governments. Under the current requirements, local governments most provide an additional financial assurance mechanism in order to use the financial test to ensure the closure, post-closure care, and corrective action costs for their solid waste management facilities if those costs are over 20% but less than 43% of their total annual revenue. This amendment will allow the use of the financial test for demonstrating financial assurance under 9VAC20-70 for costs up to 43% of the total annual revenue, as is required under the federal regulations. Currently, only a few localities are required to meet this additional requirement, and it was considered overly burdensome as it tied up funds that could be otherwise allocated for local government use.

Rationale for Using Fast-Track Process: Currently, local governments most provide an additional financial assurance mechanism in order to use the financial test to assure the closure, post-closure care, and corrective action costs for their solid waste management facilities if those costs are over 20% but less than 43% of their total annual revenue. This amendment removes this burdensome requirement on some local governments, mostly smaller/rural counties, that must provide this additional financial assurance mechanism, which is not required under the analogous federal regulations. As all local governments will now be required to meet the same criteria when using the financial test option for financial assurance and as there has been no change in the requirement to provide financial assurance for their solid waste management facilities subject to this regulation, use of the fast-track process is deemed appropriate as this amendment is expected to be noncontroversial and will provide a benefit to smaller local government entities.

Substance: The requirements for the additional financial mechanism for costs exceeding 20% have been removed from the local government financial test section in 9VAC20-70-210.

Issues: The public will benefit as these amendments will not tie up local government revenue in an additional financial assurance mechanism for environmental liabilities over 20% of their total annual revenue when a financial test is used under 9VAC20-70. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments to 9VAC20-70.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to amend its financial assurance regulations so that local governments do not have to provide an additional form of financial assurance if their environmental liabilities (closure, post closure or corrective costs for landfills, treatment facilities, etc.) are greater than 20% of the locality's revenues but less than or equal to 43% of their revenues.

Result of Analysis. Benefits likely outweigh costs for this proposed action.

Estimated Economic Impact. Currently, Virginia regulations, as well as federal rules, allow local governments that meet certain financial requirements (9VAC20-70-210 - Local government financial test) to use their sound financial position to assure that they will be able to pay for their environmental liabilities as they come due so long as those environmental liabilities are not greater than 43% of their revenues each year. Virginia additionally requires localities with environmental liabilities that are greater than 20% (but are less than or equal to 43%) of a locality's revenues to provide some other tangible financial assurance that the locality will be able to meet its obligations. A locality may currently meet this additional requirement by establishing either:

1) A restricted sinking fund,

2) An escrow account managed by a third party escrow agent or

3) A letter of credit.

The Department of Environmental Quality (DEQ) reports that this additional requirement is more stringent than the federal requirement. DEQ further reports that only a few localities are currently required to provide the additional assurance and that the Board considers the requirement for the additional assurance to be overly burdensome. Consequently, the Board now proposes to eliminate this additional requirement and allow localities to use the local government financial test to assure that they can meet their financial obligations.

Affected localities will benefit from this change as they will no longer have funds tied up in the additional financial assurance and can use those funds to meet other budget obligations. Since only localities that are in sound financial shape will pass the financial test in these regulations, the probability that citizens of these localities will suffer some harm from environmental issues that the locality is unable to afford fixing, and that they would have been able to fix with the additional assurance, is likely low. The benefits of this proposed regulatory change likely outweigh its costs.

Businesses and Entities Affected. DEQ reports that this regulatory change will potentially affect all local governments in Virginia.

Localities Particularly Affected. Localities whose environmental liabilities are currently greater than 20%, but less than or equal to 43%, of their annual revenue will benefit from this regulatory action.

Projected Impact on Employment. This regulatory action will likely have little to no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little to no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. This proposed regulatory change does not affect any private business.

Small Businesses: Alternative Method that Minimizes Adverse Impact. This proposed regulatory change does not affect any private business.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendment allows local governments to use certain financial tests to ensure environmental costs for solid waste management facilities up to 43% of the total annual revenue without submission of an additional mechanism to cover any amount over 20% of revenues.

9VAC20-70-210. Local government financial test.

An owner or operator that satisfies the requirements of subdivisions 1 through 3 of this section may demonstrate financial assurance using the local government financial test up to the amount specified in subdivision 4 of this section.

1. Financial component.

a. The owner or operator shall satisfy the provisions of subdivision 1 a of this section, as applicable:

(1) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he shall supply the director with documentation demonstrating that the owner or operator has a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(2) If the owner or operator does not have outstanding, rated general obligation bonds, he shall satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement:

(a) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(b) A ratio of annual debt service to total expenditures less than or equal to 0.20.

b. The owner or operator shall prepare his financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or by the Auditor of Public Accounts.

c. An owner or operator is not eligible to assure its obligations under this section if he:

(1) Is currently in default on any outstanding general obligation bonds;

(2) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

(3) Operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; or

(4) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or Auditor of Public Accounts auditing its financial statement as required under subdivision 1 b of this section. However, the director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems the qualification insufficient to warrant disallowance of the test.

2. Public notice component. The local government owner or operator shall place a reference to the closure, post-closure care, or corrective action costs assured through the financial test into the next comprehensive annual financial report (CAFR) after January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later. Disclosure shall include the nature and source of closure and post-closure requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective

action cost shall be placed in CAFR no later than 120 days after the corrective action remedy has been selected in accordance with 9VAC20-81-260. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure care costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

3. Recordkeeping and reporting requirements.

a. The local government owner or operator must submit to the department the following items and place copies of the items in the facility's operating record:

(1) An original letter signed by the local government's chief financial officer worded as specified in 9VAC20-70-290 G;

(2) The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(3) A report to the local government from the local government's independent certified public accountant (CPA) or the Auditor of Public Accounts based on performing an agreed upon procedures engagement relative to the financial ratios required by subdivision ~~1 a (3)~~ 1 a (2) of this section, if applicable, and the requirements of subdivisions 1 b, 1 c (3) and 1 c (4) of this section. The CPA or state agency's report shall state the procedures performed and the CPA or state agency's findings;

(4) A copy of the comprehensive annual financial report (CAFR) used to comply with subdivision 2 of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met;

(5) A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care costs if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9VAC20-70-290 H; and

(6) If the local government is required under this section to fund a restricted sinking fund, escrow account, or to obtain an irrevocable letter of credit, an original letter signed by the local government's chief financial officer and worded as specified in 9VAC20-70-290 I must be submitted.

b. The items required in subdivision 3 a of this section shall be submitted to the department and placed in the facility operating record as follows:

(1) In the case of closure and post-closure care, either before January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later; or

(2) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 9VAC20-81-260.

c. After the initial submission of the items, the local government owner or operator must update the information, place a copy of the updated information in the operating record, and submit the updated documentation described in subdivisions 3 a (1) through (6) of this section to the department within 180 days following the close of the owner or operator's fiscal year.

d. The local government owner or operator is no longer required to meet the requirements of subdivision 3 of this section when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The owner or operator is released from the requirements of this section in accordance with 9VAC20-70-111 E, 9VAC20-70-112 B, or 9VAC20-70-113 C.

e. A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place a copy of the financial assurance mechanism in the operating record, and submit the original financial assurance mechanism to the director.

f. The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall

provide alternate financial assurance in accordance with this article.

4. Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under subdivision 1 of this section is determined as follows:

a. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. ~~If the local government assures closure, post-closure, and corrective action costs that exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:~~

~~(1) A restricted sinking fund for the purpose of funding closure of the facility;~~

~~(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or~~

~~(3) A letter of credit for the purpose of funding closure of the facility.~~

~~The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:~~

~~((CE*CD) E) where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure.~~

b. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 9VAC25-590~~-10 et seq.~~, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management Regulations (9VAC20-60), it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total shall not exceed 43% of the local government's total annual revenue. ~~If the local government's total environmental liabilities assured through financial tests exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:~~

~~(1) A restricted sinking fund for the purpose of funding closure of the facility;~~

~~(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or~~

~~(3) A letter of credit for the purpose of funding closure of the facility.~~

~~The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:~~

~~((CE*CD) E) where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure.~~

c. The owner or operator shall obtain an alternate financial assurance mechanism for those costs that exceed the limits set in subdivisions 4 a and 4 b of this section.

VA.R. Doc. No. R13-3445; Filed May 22, 2013, 3:38 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (amending 9VAC20-90-120).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 17, 2013.

Effective Date: August 1, 2013.

Agency Contact: Debra A. Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Section 10.1-1402.16 of the Code of Virginia specifically authorizes the collection of permit fees and requires the establishment of a fee schedule by regulation, and § 10.1-1402.1 of the Code of Virginia provides requirements for such regulation.

Purpose: The rationale for this regulatory action is to provide relief from a burdensome permit amendment fee for solid waste landfills that are undergoing corrective action. The work required while in corrective action is costly, and, with a lower fee, it is hoped that more moneys will be available for actual remediation of any contamination. The new fee will be sufficient and more in line with other permit action fees as the department continues to work on streamlining the groundwater corrective permitting program.

Rationale for Using Fast-Track Process: The current permit action fee for amending a permit to include corrective action at solid waste landfills is $22,860. This fee has been evaluated and deemed to be burdensome with the streamlining that is being proposed for the corrective action program. With this amendment, a new fee of $3,000 for this permit amendment action is being proposed as it is more in line with the other permit amendment action fees. Corrective action implementation is a costly process, and it is hoped that

with the reduction in the permit fee additional moneys may be made available for the actual corrective action activities at the landfill while still providing the department with sufficient funds for processing the permit amendment. For these reasons, the proposed amendment is expected to be noncontroversial, and use of the fast-track process is justified.

Substance: The corrective action fee in Table 3.1-2 of 9VAC20-90-120 has been changed to $3,000.

Issues: The public will benefit as this regulatory action will lessen the cost burden for the corrective action permit amendment and may provide more moneys to be available for the corrective remedial action. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment to 9VAC20-90.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to decrease its fee for corrective action permits at solid waste landfills from $22,860 to $3,000.

Result of Analysis. Benefits likely outweigh costs for this proposed action.

Estimated Economic Impact. Currently, the Board's fee for issuing a corrective action (module XIV) permit for solid waste management sites is $22,860. Board staff reports that their corrective action program is being streamlined and that the current fee is now excessive. Consequently, the Board now proposes to decrease this fee to $3,000. The Board estimates that the proposed fee will be sufficient to cover the Department of Environmental Quality's (DEQ) costs for issuing these permits. No other affected entity is likely to incur costs on account of this change. Entities that must obtain these permits will benefit greatly from having this fee reduced by approximately 87%. Residents of communities where affected solid waste management sites are located may also benefit as lowering this fee will leave site operators with more money to actually accomplish the required corrective actions.

Businesses and Entities Affected. DEQ reports that there are currently 217 solid waste management sites in the Commonwealth. DEQ further reports that 59 of these solid waste management sites have previously had to amend their permits for a corrective action remedy and submit the current corrective action fee of $22,860. This regulatory action will affect any solid waste management sites that have to amend their permits for corrective action in the future.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory change.

Projected Impact on Employment. This regulatory action will likely have little to no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little to no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Affected small businesses are very unlikely to incur any additional costs on account of this proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Affected small businesses are very unlikely to incur any additional costs on account of this proposed regulation.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

This regulatory action decreases the fee for a corrective action (Module XIV) permit at a solid waste landfill to $3,000.

9VAC20-90-120. Permit application fee schedules.

TABLE 3.1–1. NEW OR INITIAL ISSUANCE OR ACTION.

TYPE OF FACILITY	FEE
All landfills:	
Part A application	$4,180
Part B application	$18,680
Incineration/Energy Recovery Facility	$5,880
Transfer Station, Materials Recovery Facility, Regulated Medical Waste Storage Facility, or Regulated Medical Waste Treatment Facility	$4,310
Compost Facility	
Facilities Processing Category I Waste	$6,850
Facilities Processing Waste Categories I, II, or III, or Categories III and Lower	$10,550
Facilities Processing Waste Categories I, II, III, or IV, or Categories IV and Lower	$12,670
Experimental Solid Waste Facility	$2,090
Permit-by-rule Initial Review and Confirmation	$390
Emergency Permit	$2,310

TABLE 3.1-2. MAJOR PERMIT ACTIONS, AMENDMENTS, OR MODIFICATIONS.

TYPE OF PERMIT MODULE	FEE
Landfill Part A	$4,180
General - Module I	$390
Facility - Module II	$1,310
Landfill - Module III, IV, or V	$7,050
Design plan review	$910
Liner design review	$1,960
Leachate system review	$1,310
Gas management plan review	$1,700
Drainage plan review	$910
Cover design review	$1,830
Equipment	$390
Compost facility - Module VI	$3,660
Design plan review	$650
Liner design review	$1,310
Leachate system review	$910
Drainage plan review	$650
Equipment	$390
Transfer station - Module VII	$1,180
Material recovery facility - Module VIII	$1,570
Waste supply analysis	$650
Waste management areas	$520
Wastewater management areas	$390
Incinerator/Energy recovery facility - Module IX	$3,000
Waste and residue storage	$910
Operational requirements	$1,570
Waste control procedures	$520
Groundwater monitoring - Module X or XI	$3,260
Well placement	$1,310
Materials and specifications	$390
Sampling plan	$1,570
Closure - Module XII	$390
Post-closure - Module XIII	$390
Corrective action - Module XIV	~~$22,860~~ $3,000
Leachate handling Module XV	$1,310
Regulated medical waste storage facility - Module XVI	$390
Regulated medical waste treatment facility - Module XVII	$390
Permit-by-rule Modification Review and Confirmation	$390
Public participation (does not include costs of newspaper advertisements or radio broadcasts)	$1,040

TABLE 3.1-3. VARIANCE REQUESTS.

TYPE OF VARIANCE	FEE
Base fee for all variances	$390
Supplemental fees based on variance type	

Exemption from classification as a solid waste	$520
Variance to permitting requirements	
Siting requirements	$520
Facility design (other than alternate liner design)	$520
Operational requirements	--
Groundwater monitoring (other than groundwater protection standards and location of monitoring system)	$920
Closure requirements	--
Post-closure requirements	--
Groundwater Protection Standards	--
Alternate liner system design	$1,570
Location of groundwater monitoring system	$920

VA.R. Doc. No. R13-3525; Filed May 22, 2013, 3:43 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9VAC20-110-110).**

Statutory Authority: §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC § 1809-1810; 49 CFR Parts 107, 170-180, 383, and 390-397.

Effective Date: July 17, 2013.

Agency Contact: Debra A. Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Summary:

The amendment incorporates certain federal amendments to regulations governing the transportation of hazardous materials promulgated by the U.S. Secretary of Transportation as of October 1, 2012.

Part III
Compliance With Federal Regulations

9VAC20-110-110. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated as of October 1, ~~2011~~ 2012, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. ~~Exemptions~~ Special Permits. 49 CFR Part 107, Subpart B.

2. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.

3. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.

4. Specifications for Packagings in 49 CFR Part 178.

5. Specifications for Tank Cars in 49 CFR Part 179.

6. Continuing ~~Qualifications~~ Qualification and Maintenance of Packagings in 49 CFR Part 180.

7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R13-3630; Filed May 20, 2013, 1:21 p.m.

◆ ◆

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-10).**

12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-100, 12VAC30-141-740).

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

Effective Date: July 17, 2013.

Agency Contact: Cindy Olson, Eligibility Policy Manager, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or email cindy.olson@dmas.virginia.gov.

Background:

The amendments are the result of the passage of Chapters 646 and 689 of the 2012 Acts of Assembly, which add a provision for the Commonwealth, through the authorization given to states through § 214 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Public Law 111-3) to provide medical assistance coverage to children and pregnant women who are lawfully residing in the United States and who are otherwise eligible for coverage through the Commonwealth's Medicaid, Federal Access to Medical Insurance Security (FAMIS) Plan, and FAMIS MOMS programs.

As a result of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, limitations were placed on receipt of medical assistance coverage for most lawfully admitted noncitizens. Currently, most lawfully admitted pregnant women who are otherwise eligible for Medicaid are subject to a five-year waiting period before eligibility for full Medicaid coverage can begin and are eligible only for Medicaid payment of an emergency medical condition. The five-year waiting period also applied to lawfully admitted noncitizen children and pregnant women under FAMIS.

Section 214 of CHIPRA changed the requirement set out in PRWORA by permitting states, at their option, to cover certain noncitizen children and pregnant women who are lawfully residing in the United States and otherwise meet the criteria for coverage under Medicaid or FAMIS, but who are barred from participation in the program during their first five years of residence in the United States. This CHIPRA provision terminates the application of the five-year waiting period to these otherwise qualified noncitizen pregnant women and children. Under CHIPRA this population now qualifies for medical assistance coverage and DMAS regulations must reflect this federal change.

Summary:

The amendments implement legislative changes enacted through Chapters 646 and 689 of the 2012 Acts of Assembly by providing medical assistance coverage for lawfully residing noncitizen pregnant women and children under the age of 19 in the Commonwealth's Medicaid, FAMIS, and FAMIS MOMS programs.

Part I

General Conditions of Eligibility

12VAC30-40-10. 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:

(1) Except as specified under items (2) and (3) below, for AFDC-related individuals, meets the nonfinancial eligibility conditions of the AFDC program.

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

(3) 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.

(4) 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 Part 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 national of the United States; 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).; or

e. Is an alien who is a pregnant woman or who is a child under the age of 19 who is legally residing in the United States and whose coverage is authorized under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). CHIPRA provides for coverage of the following individuals:

~~(1) "Qualified aliens" otherwise subject to the five-year waiting period per § 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;~~

~~(2) Citizens of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Island, and the Republic of Palau) who have been admitted to the United States as nonimmigrants and are permitted by the Department of Homeland Security to reside permanently or indefinitely in the United States;~~

~~(3) Individuals described in 8 CFR 103.12(a)(4) who do not have a permanent residence in the country of their nationality and are in statuses that permit them to remain in the United States for an indefinite period of time pending adjustment of status. These individuals include:~~

~~(a) Individuals currently in temporary resident status as amnesty beneficiaries pursuant to § 210 or 245A of the Immigration and Nationality Act (INA);~~

~~(b) Individuals currently under Temporary Protected Status pursuant to § 244 of the INA;~~

~~(c) Family Unity beneficiaries pursuant to § 301 of P.L. 101-649 as amended, as well as pursuant to § 1504 of P.L. 106-554;~~

~~(d) Individuals currently under Deferred Enforced Departure pursuant to a decision made by the President; and~~

~~(e) Individuals who are the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status; and~~

~~(4) Individuals in nonimmigrant classifications under the INA who are permitted to remain in the United States for an indefinite period, including the following who are specified in § 101(a)(15) of the INA:~~

~~(a) Parents or children of individuals with special immigrant status under § 101(a)(27) of the INA as permitted under § 101(a)(15)(N) of the INA;~~

~~(b) Fiancees of a citizen as permitted under § 101(a)(15)(K) of the INA;~~

~~(c) Religious workers under § 101(a)(15)(R);~~

~~(d) Individuals assisting the Department of Justice in a criminal investigation as permitted under § 101(a)(15)(U) of the INA;~~

~~(e) Battered aliens; and~~

~~(f) Individuals with a petition pending for three years or more as permitted under § 101(a)(15)(V) of the INA.~~

(1) A qualified alien as defined in § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(2) An alien in nonimmigrant status who has not violated the terms of the status under which he was admitted or to which he has changed after admission;

(3) An alien who has been paroled into the United States pursuant to § 212(d)(5) of the Immigration and Nationality Act (INA) for less than one year, except for an alien paroled for prosecution, for deferred inspection, or pending removal proceedings;

(4) An alien who belongs to one of the following classes:

(a) Individuals currently in temporary resident status pursuant to § 210 or 245A of the INA;

(b) Individuals currently under Temporary Protected Status (TPS) pursuant to § 244 of the INA and pending applicants to TPS who have been granted employment authorization;

(c) Aliens who have been granted employment authorization under 8 USC § 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(d) Family unity beneficiaries pursuant to § 301 of Pub. L. No. 101-649 as amended;

(e) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President of the United States;

(f) Aliens currently in deferred action status; and

(g) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;

(5) A pending applicant for asylum under § 208(a) of the INA or for withholding of removal under § 241(b)(3) of the INA or under the Convention against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(6) An alien who has been granted withholding of removal under the Convention against Torture;

(7) A child who has a pending application for Special Immigrant Juvenile status as described in § 101(a)(27)(J) of the INA;

(8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 USC § 1806(e); or

(9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

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. a. 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)).

b. Applicant or recipient is required, under § 1903(x) to furnish satisfactory documentary evidence of both identity and of U.S. citizenship upon signing the declaration of citizenship required by § 1137(d). Qualified aliens signing the declaration of satisfactory immigration status required by § 1137(d) must also present and have verified documents establishing the claimed immigration status under § 137(d). Exception: Nonqualified aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) as described in § 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 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.

11. Is required, as a condition of eligibility for Medicaid payment of long-term care services, to disclose at the time of application for or renewal of Medicaid eligibility, a description of any interest the individual or his spouse has in an annuity (or similar financial instrument as may be specified by the Secretary of Health and Human Services). By virtue of the provision of medical assistance, the state shall become a remainder beneficiary for all annuities purchased on or after February 8, 2006.

12. Is ineligible for Medicaid payment of nursing facility or other long-term care services if the individual's equity interest in his home exceeds $500,000. This dollar amount shall be increased beginning with 2011 from year to year based on the percentage increase in the Consumer Price Index for all Urban Consumers rounded to the nearest $1,000.

This provision shall not apply if the individual's spouse, or the individual's child who is under age 21 or who is disabled, as defined in § 1614 of the Social Security Act, is lawfully residing in the individual's home.

Part III

Eligibility Determination and Application Requirements

12VAC30-141-100. Eligibility requirements.

A. This section shall be used to determine eligibility of children for FAMIS.

B. FAMIS shall be in effect statewide.

C. Eligible children must:

1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;

2. Be under 19 years of age;

3. Be residents of the Commonwealth;

4. Be either U.S. citizens, U.S. nationals or qualified noncitizens;

5. Be uninsured, that is, not have comprehensive health insurance coverage;

6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and

7. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS, the local department of social services will enroll the child in the FAMIS program.

2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare & Medicaid. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b ~~and~~, c, and e of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.

H. Coverage under other health plans.

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance the child currently has or had within the past four months. If the child had health insurance coverage that was terminated in the past four months, inquiry as to why the health insurance was terminated is made. Each redetermination of eligibility shall also document inquiry about current health insurance or health insurance the child had within the past four months. If the child has been covered under a health insurance plan within four months of application for or receipt of FAMIS services, the child will be ineligible, unless the child is pregnant at the time of application, or, if age 18 or if under the age of 18, the child's parent, caretaker relative, guardian, legal custodian or authorized representative demonstrates good cause for discontinuing the coverage.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

c. Good cause. A child shall not be ineligible for FAMIS if health insurance was discontinued within the four-month period prior to the month of application if one of the following good cause exceptions is met.

(1) The family member who carried insurance, changed jobs, or stopped employment, and no other family member's employer contributes to the cost of family health insurance coverage.

(2) The employer stopped contributing to the cost of family coverage and no other family member's employer contributes to the cost of family health insurance coverage.

(3) The child's coverage was discontinued by an insurance company for reasons of uninsurability, e.g., the child has used up lifetime benefits or the child's coverage was discontinued for reasons unrelated to payment of premiums.

(4) Insurance was discontinued by a family member who was paying the full cost of the insurance premium under a COBRA policy and no other family member's employer contributes to the cost of family health insurance coverage.

(5) Insurance on the child was discontinued by someone other than the child (if 18 years of age) or if under age 18, the child's parent or stepparent living in the home, e.g., the insurance was discontinued by the child's absent parent, grandparent, aunt, uncle, godmother, etc.

(6) Insurance on the child was discontinued because the cost of the premium exceeded 10% of the family's monthly income or exceeded 10% of the family's monthly income at the time the insurance was discontinued.

(7) Other good cause reasons may be established by the DMAS director.

I. Eligibility of newborns. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time. A child born to a mother who is enrolled in FAMIS, under either the XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall be deemed eligible for FAMIS for one year from birth unless the child is otherwise eligible for Medicaid.

12VAC30-141-740. Eligibility requirements.

A. This section shall be used to determine eligibility of pregnant women for FAMIS MOMS.

B. FAMIS MOMS shall be in effect statewide.

C. Eligible pregnant women must:

1. Be determined ineligible for Medicaid due to excess income by a local department of social services or by DMAS eligibility staff co-located at the FAMIS CPU;

2. Be a pregnant woman at the time of application;

3. Be a resident of the Commonwealth;

4. Be either a U.S. citizen, U.S. national or a qualified noncitizen;

5. Be uninsured, that is, not have comprehensive health insurance coverage;

6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health insurance plan on the basis of the family member's employment with a state agency; and

7. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All applications for FAMIS MOMS coverage received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Pregnant women screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS MOMS until there has been a finding of ineligibility for Medicaid. Pregnant women who do not appear to be eligible for Medicaid due to excess income shall have their eligibility for FAMIS MOMS determined and, if eligible, will be enrolled in the FAMIS MOMS program. Applications for FAMIS MOMS received at a local department of social services shall have a full Medicaid eligibility determination completed. Pregnant women determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS MOMS determined and, if eligible, the local department of social services will enroll the pregnant woman in the FAMIS MOMS program.

2. Standards. Income standards for FAMIS MOMS are based on a comparison of countable income to 200% of the federal poverty level for the family size. Countable income and family size are based on the methodology utilized by the Medicaid program as defined in 12VAC30-40-100 e. Pregnant women who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS MOMS.

3. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS MOMS. If the family income exceeds the income limits described in this section, the individual shall be

ineligible for FAMIS MOMS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a pregnant woman is a resident of Virginia for purposes of eligibility for FAMIS MOMS. A child who is not emancipated and is temporarily living away from home is considered living with her parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizenship or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identify unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b ~~and~~, c, and e of 12VAC30-40-10 will be used when determining whether a pregnant woman is a qualified noncitizen for purposes of FAMIS MOMS eligibility.

H. Coverage under other health plans.

1. Any pregnant woman covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS MOMS.

2. No substitution for private insurance.

a. Only uninsured pregnant women shall be eligible for FAMIS MOMS. A pregnant woman is not considered to be insured if the health insurance plan covering the pregnant woman does not have a network of providers in the area where the pregnant woman resides. Each application for FAMIS MOMS coverage shall include an inquiry about health insurance the pregnant woman has at the time of application.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

VA.R. Doc. No. R13-3234; Filed May 21, 2013, 2:53 p.m.

Emergency Regulation

Titles of Regulations: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-147, 12VAC30-60-200).**

12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-370; repealing 12VAC30-120-260 through 12VAC30-120-350).

12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-10, 12VAC30-141-20, 12VAC30-141-70, 12VAC30-141-200, 12VAC30-141-500, 12VAC30-141-570, 12VAC30-141-660, 12VAC30-141-670, 12VAC30-141-680, 12VAC30-141-730, 12VAC30-141-830, 12VAC30-141-850, 12VAC30-141-880).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: May 23, 2013, through May 22, 2014.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Preamble:

The repeal of the MEDALLION primary care case management program (PCCM) is the result of the expansion of managed care programs (MCOs) throughout the Commonwealth. The MEDALLION program was developed in 1991 as the first managed care service delivery mechanism in Virginia. This program paid primary care providers a small monthly fee to be the 'medical home' for their Medicaid patients, providing referrals to specialists, and care coordination. MEDALLION has continued to operate until now as either the sole managed care option in some localities or as an alternative managed care option in localities having only one MCO. With the expansion of MCOs statewide, effective July 2012, the PCCM program is no longer needed. This change affects both Medicaid (Title XIX) and FAMIS (Title XXI). This change also affects numerous other regulations that merely reference the PCCM program.

Repealing the MEDALLION program is not expected to be controversial because managed care organizations will be operational statewide by the time this action is effective and all Medicaid beneficiaries who are eligible for managed care enrollment will be served via that system. The managed care organization expansion statewide, effective July 1, 2012, renders the MEDALLION program obsolete. Medicaid beneficiaries who are excluded from managed care will receive their required medical care via the ongoing fee-for-service delivery system.

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4. Item 307 RR a of Chapter 3 of the 2013 Acts of

Assembly, Special Session I, directed the agency to expand its managed care service delivery system to the final remaining areas of the state not already covered by managed care - the Roanoke/Alleghany area and far Southwest Virginia.

12VAC30-60-147. Substance abuse treatment services utilization review criteria.

A. Substance abuse residential treatment services for pregnant and postpartum women. This subsection provides for required services which must be provided to participants, linkages to other programs tailored to specific recipient needs, and program staff qualifications. The following services must be rendered to program participants and documented in their case files in order for this residential service to be reimbursed by Medicaid.

1. Services must be authorized following face-to-face evaluation/diagnostic assessment conducted by one of the appropriately licensed or certified professionals as specified in 12VAC30-50-510.

a. To assess whether the woman will benefit from the treatment provided by this service, the professional shall utilize the Adult Patient Placement Criteria for Level III.3 (Clinically-Managed Medium-Intensity Residential Treatment) or Level III.5 (Clinically-Managed Medium/High Intensity Residential Treatment) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, Revised 2001, published by the American Society of Addiction Medicine. Services must be reauthorized every 90 days by one of the appropriately authorized professionals, based on documented assessment using Adult Continued Service Criteria for Level III.3 (Clinically-Managed Medium-Intensity Residential Treatment) or Level III.5 (Clinically-Managed Medium-High Intensity Residential Treatment) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, Revised 2001, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the authorized professionals if the patient is absent for more than 72 hours from the program without staff permission. All of the professionals must demonstrate competencies in the use of these criteria. The authorizing professional must not be the same individual providing nonmedical clinical supervision in the program.

b. Utilization reviews shall verify, but not be limited to, the presence of these 90-day reauthorizations as well as the appropriate re-authorizations after absences.

c. Documented assessment regarding the woman's need for the intense level of services must have occurred within 30 days prior to admission.

d. The Individual Service Plan (ISP) shall be developed within one week of admission and the obstetric assessment completed and documented within a two-week period following admission. Development of the ISP shall involve the woman, appropriate significant others, and representatives of appropriate service agencies.

e. The ISP shall be reviewed and updated every two weeks.

f. Psychological and psychiatric assessments, when appropriate, shall be completed within 30 days of admission.

g. Face-to-face therapeutic contact with the woman which is directly related to her Individual Service Plan shall be documented at least twice per week.

h. While the woman is participating in this substance abuse residential program, reimbursement shall not be made for any other community mental health/mental retardation/substance abuse rehabilitative services concurrently rendered to her.

i. Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the estimated date of delivery, discharge planning must begin within two weeks of admission. Discharge planning shall involve the woman, appropriate significant others, and representatives of appropriate service agencies. The priority services of discharge planning shall seek to assure a stable, sober, and drug-free environment and treatment supports for the woman.

2. Linkages to other services. Access to the following services shall be provided and documented in either the woman's record or the program documentation:

a. The program must have a contractual relationship with an obstetrician/gynecologist who must be licensed by the Board of Medicine of the Virginia Department of Health Professions.

b. The program must also have a documented agreement with a high-risk pregnancy unit of a tertiary care hospital to provide 24-hour access to services for the woman and ongoing training and consultation to the staff of the program.

c. In addition, the provider must provide access to the following services either through staff at the residential program or through contract:

(1) Psychiatric assessments as needed, which must be performed by a physician licensed to practice by the Virginia Board of Medicine.

(2) Psychological assessments as needed, which must be performed by a clinical psychologist licensed to practice by the Board of Psychology of the Virginia Department of Health Professions.

(3) Medication management as needed or at least quarterly for women in the program, which must be performed by a physician licensed to practice by the

Board of Medicine in consultation with the high-risk pregnancy unit, if appropriate.

(4) Psychological treatment, as appropriate, for women present in the program, with clinical supervision provided by a clinical psychologist licensed to practice by the Board of Psychology.

(5) Primary health care, including routine gynecological and obstetrical care, if not already available to the women in the program through other means (e.g., ~~Medallion or~~ other Medicaid-sponsored primary health care ~~program)~~ programs).

3. Program and staff qualifications. In order to be eligible for Medicaid reimbursement, the following minimum program and staff qualifications must be met:

a. The provider of treatment services shall be licensed by ~~DMHMRSAS~~ DBHDS to provide residential substance abuse services.

b. Nonmedical clinical supervision must be provided to staff at least weekly by one of the following professionals:

(1) A counselor who has completed master's level training in either psychology, social work, counseling or rehabilitation who is also either certified as a substance abuse counselor by the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals of the Virginia Department of Health Professions or as a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia, or who holds any certification from the National Association of Alcoholism and Drug Abuse Counselors.

(2) A professional licensed by the appropriate board of the Virginia Department of Health Professions as either a professional counselor, clinical social worker, registered nurse, clinical psychologist, or physician who demonstrates competencies in all of the following areas of addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities; or as a licensed substance abuse professional.

(3) A professional certified as either a clinical supervisor by the Substance Abuse Certification Alliance of Virginia or as a master addiction counselor by the National Association of Alcoholism and Drug Abuse Counselors.

c. Residential facility capacity shall be limited to 16 adults. Dependent children who accompany the woman into the residential treatment facility and neonates born while the woman is in treatment shall not be included in the 16-bed capacity count. These children shall not receive any treatment for substance abuse or psychiatric disorders from the facility.

d. The minimum ratio of clinical staff to women should ensure that sufficient numbers of staff are available to adequately address the needs of the women in the program.

B. Substance abuse day treatment services for pregnant and postpartum women. This subsection provides for required services which must be provided to women, linkages to other programs tailored to specific needs, and program and staff qualifications.

1. The following services must be rendered and documented in case files in order for this day treatment service to be reimbursed by Medicaid:

a. Services must be authorized following a face-to-face evaluation/diagnostic assessment conducted by one of the appropriately licensed professionals as specified in 12VAC30-50-510.

b. To assess whether the woman will benefit from the treatment provided by this service, the licensed health professional shall utilize the Adult Patient Placement Criteria for Level II.1 (Intensive Outpatient Treatment) or Level II.5 (Partial Hospitalization) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, Revised 2001, published by the American Society of Addiction Medicine. Services shall be reauthorized every 90 days by one of these appropriately authorized professionals, based on documented assessment using Level II.1 (Adult Continued Service Criteria for Intensive Outpatient Treatment) or Level II.5 (Adult Continued Service Criteria for Partial Hospitalization Treatment) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, Revised 2001, published by the American Society of Addiction Medicine. In addition, services shall be reauthorized by one of the appropriately authorized professionals if the patient is absent for five consecutively scheduled days of services without staff permission. All of the authorized professionals shall demonstrate competency in the use of these criteria. This individual shall not be the same individual providing nonmedical clinical supervision in the program.

c. Utilization reviews shall verify, but not be limited to, the presence of these 90-day reauthorizations, as well as the appropriate reauthorizations after absences.

d. Documented assessment regarding the woman's need for the intense level of services; the assessment must have occurred within 30 days prior to admission.

e. The Individual Service Plan (ISP) shall be developed within 14 days of admission and an obstetric assessment completed and documented within a 30-day period following admission. Development of the ISP shall involve the woman, appropriate significant others, and representatives of appropriate service agencies.

f. The ISP shall be reviewed and updated every four weeks.

g. Psychological and psychiatric assessments, when appropriate, shall be completed within 30 days of admission.

h. Face-to-face therapeutic contact with the woman which is directly related to her ISP shall be documented at least once per week.

i. Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the estimated date of delivery, discharge planning shall seek to begin within two weeks of admission. Discharge planning shall involve the woman, appropriate significant others, and representatives of appropriate service agencies. The priority services of discharge planning shall seek to assure a stable, sober, and drug-free environment and treatment supports for the woman.

j. While participating in this substance abuse day treatment program, the only other mental health, mental retardation or substance abuse rehabilitation services which can be concurrently reimbursed shall be mental health emergency services or mental health crisis stabilization services.

2. Linkages to other services or programs. Access to the following services shall be provided and documented in the woman's record or program documentation.

a. The program must have a contractual relationship with an obstetrician/gynecologist. The obstetrician/gynecologist must be licensed by the Virginia Board of Medicine as a medical doctor.

b. The program must have a documented agreement with a high-risk pregnancy unit of a tertiary care hospital to provide 24-hour access to services for the women and ongoing training and consultation to the staff of the program.

c. In addition, the program must provide access to the following services (either by staff in the day treatment program or through contract):

(1) Psychiatric assessments, which must be performed by a physician licensed to practice by the Board of Medicine of the Virginia Department of Health Professions.

(2) Psychological assessments, as needed, which must be performed by clinical psychologist licensed to practice by the Virginia Board of Psychology.

(3) Medication management as needed or at least quarterly for women in the program, which must be performed by a physician licensed to practice by the Virginia Board of Medicine in consultation with the high-risk pregnancy unit, if appropriate.

(4) Psychological treatment, as appropriate, for women present in the program, with clinical supervision provided by a clinical psychologist licensed to practice by the Board of Psychology of the Virginia Department of Health Professions.

(5) Primary health care, including routine gynecological and obstetrical care, if not already available to the women in the program through other means (e.g., ~~Medallion or~~ other Medicaid-sponsored primary health care program).

3. Program and staff qualifications. In order to be eligible for Medicaid reimbursement, the following minimum program and staff qualifications must be met:

a. The provider of treatment services shall be licensed by ~~DMHMRSAS~~ DBHDS to provide either substance abuse outpatient services or substance abuse day treatment services.

b. Nonmedical clinical supervision must be provided to staff at least weekly by one of the following appropriately licensed professionals:

(1) A counselor who has completed master's level training in either psychology, social work, counseling or rehabilitation who is also either certified as a substance abuse counselor by the Virginia Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals or as a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia, or who holds any certification from the National Association of Alcoholism and Drug Abuse Counselors.

(2) A professional licensed by the appropriate board of the Virginia Department of Health Professions as either a professional counselor, clinical social worker, clinical psychologist, or physician who demonstrates competencies in all of the following areas of addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities; or as a licensed substance abuse professional.

(3) A professional certified as either a clinical supervisor by the Substance Abuse Certification Alliance of Virginia or as a master addiction counselor by the National Association of Alcoholism and Drug Abuse Counselors.

c. The minimum ratio of clinical staff to women should ensure that adequate staff are available to address the needs of the women in the program.

12VAC30-60-200. Ticket to Work and Work Incentives Improvement Act (TWWIIA) basic coverage group: alternative benefits for Medicaid Buy-In program.

A. The state elects to provide alternative benefits under § 1937 of the Social Security Act. The alternative benefit package will be available statewide.

B. The population who will be offered opt-in alternative coverage and who will be informed of the available benefit options prior to having the option to voluntarily enroll in an alternative benefit package consists of working individuals with disabilities enrolled pursuant to the Social Security Act, § 1902(a)(10)(A)(ii)(XV) (Ticket to Work and Work Incentives Improvement Act) covered group or who meet the income, resource and eligibility requirements for the § 1902(a)(10)(A)(ii)(XV) covered group.

C. Medicaid Buy-In: program outreach.

1. Future Medicaid Works solicitations will be geared towards individuals who are currently covered in the SSI and blind and disabled 80% federal poverty level groups; the letter will be an invitation to consider going to work, or to increase how much they work, and inform them that they will still be able to keep their Medicaid health care coverage.

2. They will be advised that this is voluntary and will enable them to earn higher income and retain more assets from their earnings. It will also explain that this option includes an alternative benefits package comprised of their regular Medicaid benefits plus personal assistance services for those who need personal assistance and related services in order to live and work in the community. It will be clearly stated that this program is optional. Their local eligibility worker will be able to review the advantages and disadvantages of this option in order to assist individuals in making an informed choice.

3. Current Medicaid Works enrollees will each receive personal communication by mail advising them of the new alternative benefits package and the steps needed in order to access personal assistance services. Should an enrolled individual be dissatisfied with this option or be unable to continue to be employed, their eligibility worker will reevaluate eligibility for other covered groups pursuant to changing the individual back to regular Medicaid coverage and, if necessary, to accessing personal assistance and related services through the existing home- and community-based services waivers.

4. Brochures describing this work incentive opportunity and alternative benefits option shall be prominently displayed and readily available at local departments of social services.

D. Description of Medicaid Buy-In alternative benefit package.

1. The state will offer an alternative benefit package that the secretary determines provides appropriate coverage for the population served.

2. This alternative benefits package includes all federally mandated and optional Medicaid State Plan services, as described and limited in 12VAC30-50, plus personal assistance services (PAS) for enrollees who otherwise meet the standards to receive PAS, defined as follows:

a. "Personal assistance services" or "PAS" means support services provided in home and community settings necessary to maintain or improve an individual's current health status. Personal care services are defined as help with activities of daily living, monitoring of self-administered medications, and the monitoring of health status and physical condition.

b. These services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. An additional component of PAS is work-related and postsecondary education personal services. This service will extend the ability of the personal assistance attendant to provide assistance in the workplace.

c. These services include filing, retrieving work materials that are out of reach; providing travel assistance for an individual with a mobility impairment; helping an individual with organizational skills; reading handwritten mail to an individual with a visual impairment; or ensuring that a sign language interpreter is present during staff meetings to accommodate an employee with a hearing impairment.

d. This service is only available to individuals who also require personal assistance services to meet their ADLs. Workplace or school supports are not provided if they are services provided by the Department of Rehabilitative Services, under IDEA, or if they are an employer's responsibility under the Americans with Disabilities Act or § 504 of the Rehabilitation Act.

e. Following an individual's assessment of the need for PAS and development of a plan of care, the individual will decide whether to have PAS through a personal care agency or whether to self direct his care. For individuals who choose consumer-directed care, DMAS will provide for the services of a fiscal agent to perform certain tasks as an agent for the recipient/employer who is receiving consumer-directed services. The fiscal agent will handle certain responsibilities for the individual, including but not limited to, employment taxes.

f. All governmental and private PAS providers are reimbursed according to the same published fee schedule, located on the agency's website at the following address: http://www.dmas.virginia.gov/pr-fee_files.htm. The agency's rates, based upon one-hour increments, were set as of July 1, 2006, and are effective for services on or after said dates. The agency's rates are updated periodically.

E. Wrap-around/additional services.

1. The state assures that wrap-around or additional benefits will be provided for individuals under 21 who are covered under the state plan pursuant to § 1902(a)(10)(A) of the Social Security Act to ensure early and periodic screening,

diagnostic and treatment (EPSDT) services are provided when medically necessary.

2. Wraparound benefits must be sufficient so that, in combination with the Medicaid Buy-In package, these individuals receive the full EPSDT benefit, as medically necessary. The wraparound services provided are described in 12VAC30-50-130.

F. Delivery system.

1. The alternative benefit package will be furnished through a combination of the following methods:

a. On a fee-for-service basis consistent with the requirements of § 1902(a) and implementing regulations relating to payment and beneficiary free choice of provider;

~~b. On a fee-for-service basis consistent with the requirements cited in subdivision 1 a of this subsection, except that it will be operated with a primary care case management system consistent with § 1915(b)(1);~~

~~c.~~ b. Through a managed care entity consistent with applicable managed care requirements; or

~~d.~~ c. Through premium assistance for benchmark-equivalent in employer-sponsored coverage.

2. Personal assistance services will always be fee-for-service, whereas all other Medicaid-covered services shall be through one of ~~three~~ two models: fee-for-service~~, primary care case management~~ or through managed care organizations.

G. Additional assurances.

1. The state assures that individuals will have access, through the Medicaid Buy-In alternative benefit package, to rural health clinic (RHC) services and federally qualified health center (FQHC) services as defined in subparagraphs (B) and (C) of § 1905(a)(2).

2. The state assures that payment for RHC and FQHC services is made in accordance with the requirements of § 1902(bb) of the Social Security Act.

H. Cost effectiveness of plans: the Medicaid Buy-In alternative benefit package and any additional benefits must be provided in accordance with economy and efficiency principles.

I. Compliance with the law: The state will continue to comply with all other provisions of the Social Security Act in the administration of the state plan under this title.

Part V
Medallion (Repealed.)

12VAC30-120-260. ~~Definitions.~~ (Repealed.)

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

~~"ABD" means aged, blind and disabled recipients of public assistance programs as defined by the Virginia Department of Social Services.~~

~~"Action" means a termination, suspension, or reduction of Medicaid eligibility or covered services, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; or the denial, in whole or in part, of payment for a service.~~

~~"AFDC" means the Aid to Families with Dependent Children program; this program was replaced by the Temporary Assistance to Needy Families (TANF) program. Medicaid utilizes AFDC rules in determining Medicaid eligibility for families and children.~~

~~"AFDC related" means those recipients eligible for assistance as an extension of the AFDC program, such as pregnant women and indigent children under specific ages. It shall not include foster care or spend down medically needy clients.~~

~~"Ancillary services" means those services accorded to a client that are intended to support the diagnosis and treatment of that client. These services include, but are not necessarily limited to, laboratory, pharmacy, radiology, physical therapy, and occupational therapy.~~

~~"Appeal" means a request for review of an action; all enrollee appeals are subject to the regulations set forth in 12VAC30-110.~~

~~"Area of residence" means the recipient's address in the Medicaid eligibility file.~~

~~"Client" or "clients" means an individual or individuals having current Medicaid eligibility who is enrolled in or who shall be authorized to participate as a member or members of MEDALLION.~~

~~"Comparison group" means the group of Medicaid recipients whose utilization and costs will be compared against similar groups of MEDALLION clients.~~

~~"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.~~

~~"Covering provider" means a provider designated by the primary care provider to render health care services in the temporary absence of the primary provider.~~

~~"DMAS" means the Department of Medical Assistance Services.~~

~~"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.~~

~~"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:~~

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

2. Serious impairment to bodily functions; or

3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are (i) funished by a provider that is qualified to furnish these services under this title and (ii) needed to evaluate or stabilize an emergency medical condition.

"Enrollee" is a Medicaid recipient who is currently enrolled with a PCP in a given managed care program.

"Enrollment broker" means an independent contractor that enrolls recipients in MEDALLION and is responsible for the operation and documentation of a toll free recipient service helpline. The responsibilities of the enrollment broker shall include, but not be limited to, recipient education, recipient enrollment, and tracking and resolving recipient complaints, and may include recipient marketing and outreach.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment program.

"Exclusion from MEDALLION" means the denial of a Medicaid recipient from initially enrolling in MEDALLION or the removal of an enrollee from the MEDALLION program on a temporary or permanent basis.

"External Quality Review Organization (EQRO)" is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR-related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"General practitioner" means a licensed physician who provides routine medical treatment, diagnosis, and advice to maintain a client's health and welfare.

"Grievance" is an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section. The term is also used to refer to the overall system that includes grievances and appeals and access to the state fair hearing process. Examples of subjects for grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships, such as rudeness of a provider or employee, or the failure to respect the enrollee's rights.

"Health care professional" means a provider who has appropriate clinical training in treating an enrollee's condition or disease, and as further defined in 42 CFR 438.2.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet assigned to a specific primary care provider.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to those Medicaid recipients assigned to him.

"Primary care provider" or "PCP" means that MEDALLION provider responsible for the coordination of all medical care provided to a MEDALLION client and shall be recognized by DMAS as a Medicaid provider.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12VAC30-50-229.1.

"Site" means, for purposes of this part, the geographical areas that best represent the health care delivery systems in the Commonwealth. In certain areas (sites), there may be two or more identifiable health care delivery systems.

"Specialty" or "specialist services" means those services, treatments, or diagnostic tests intended to provide the patient with a higher level of medical care or a more definitive level of diagnosis than that routinely provided by the primary care provider.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

"State" means the Commonwealth of Virginia.

"TANF" means Temporary Assistance to Needy Families and is a public assistance program administered by the Department of Social Services providing financial assistance to needy citizens.

12VAC30-120-270. ~~Program purpose.~~ (Repealed.)

The purpose of MEDALLION shall be to provide management in the delivery of health care services by linking the primary care provider (PCP) with targeted clients. The PCP shall provide medical services as appropriate for clients' health care needs and shall coordinate clients' receipt of other health services. This shall include, but not be limited to, referral to specialty providers as medically appropriate.

12VAC30-120-280. ~~MEDALLION clients.~~ (Repealed.)

A. DMAS shall determine enrollment in MEDALLION. Enrollment in MEDALLION is not a guarantee of continuing

eligibility for services and benefits under the Virginia Medical Assistance Services Program. Clients of MEDALLION shall be individuals receiving Medicaid as ABD, AFDC or AFDC related categorically needy and medically needy (except those becoming eligible through spend down) and except for foster care children, whether or not receiving cash assistance grants.

B. Exclusions.

1. The following individuals shall be excluded from participation in MEDALLION, or excluded from continued enrollment if any of the following apply:

a. Individuals who are inpatients in state mental hospitals and skilled nursing facilities, or reside in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) or a long-stay hospital;

b. Individuals who are enrolled in § 1915 c home and community based waivers, the family planning waiver, or the Family Access to Medical Insurance Security Plan (FAMIS);

c. Individuals who are participating in foster care or subsidized adoption programs, who are members of spend-down cases, or who are refugees or who receive client medical management services;

d. Individuals receiving Medicare;

e. Individuals who are enrolled in DMAS authorized residential treatment or treatment foster care programs;

f. Individuals whose coverage is retroactive only; and

g. Birth Injury Fund (BIF).

2. A client may be excluded from participating in MEDALLION if any of the following apply:

a. The client is not accepted to the caseload of any participating PCP.

b. The client's enrollment in the caseload of assigned PCP has been terminated, and other PCPs have declined to enroll the client.

c. The individual receives hospice services in accordance with DMAS criteria.

C. Client enrollment process.

1. All ABD, AFDC or AFDC related recipients excepting those meeting one of the exclusions of subsection B of this section shall be enrolled in MEDALLION.

2. Newly eligible individuals shall not participate in MEDALLION until completion of the Medicaid enrollment process. This shall include initial enrollment in the Medicaid program at the time of eligibility determination by Department of Social Services staff, or any subsequent reenrollment in the Medicaid program that may occur.

3. During the preassignment period and registration as MEDALLION clients, recipients shall be provided Medicaid covered services via the fee-for-service delivery mechanism administered by DMAS.

4. Once clients are fully registered as MEDALLION clients, they will receive MEDALLION identification material in addition to the Medicaid card.

D. PCP selection. Clients shall be given the opportunity to select the PCP of their choice.

1. Clients shall notify DMAS of their PCP selection within 30 days of receiving their MEDALLION enrollment notification letter. If notification is not received by DMAS within that timeframe, DMAS shall select a PCP for the client.

2. The selected PCP shall be a MEDALLION enrolled provider.

3. The PCP will provide 24-hour, seven day/week access, which shall include as a minimum a 24-hour, seven day/week telephone number to be provided to each MEDALLION client.

4. DMAS shall review client requests in choosing a specific PCP for appropriateness and to ensure client accessibility to all required medical services.

5. Individuals who lose then regain eligibility for MEDALLION within 60 days will be reassigned to their previous PCP without going through the preassignment and selection process.

E. Mandatory assignment of PCP.

1. The MEDALLION program enrolls clients with a primary care provider (PCP) who acts as a care coordinator, provides primary and preventive care, and refers most specialty services. The client is required to select a PCP from a list of available PCPs in his service area. If the client does not select a PCP, the client defaults to the department's pre-assignment option. Clients can access any program provider for specialty services if they obtain the necessary referral from their PCP.

2. Clients shall initially be assigned to a PCP according to the region in which they reside. Should insufficient PCPs exist within the client's specific region, clients shall be assigned a PCP in an adjacent region.

3. Each PCP shall be assigned a client, or family group if appropriate, until the maximum number of clients the PCP has elected to serve or the PCP/client limit has been reached or until there are no more clients suitable for assignment to that PCP, or all clients have been assigned.

F. Changing PCPs. MEDALLION clients in areas without managed care organizations (MCO) will have the initial 90 calendar days following the effective date of enrollment with a MEDALLION PCP to change PCPs without cause. After the initial 90-day assignment period, unless cause to change PCPs is shown pursuant to subdivision 1 or 2 of this subsection, the recipient will remain with the PCP for up to 12 months, or until the next open enrollment period. During

open enrollment, the recipient will have the option to select another PCP. Recipients will be given at least 60 days notice prior to the end of the current enrollment period (and all future enrollment periods) during which time recipients can select another PCP. Open enrollment periods will occur annually.

1. Requests for change of PCP "for cause" are not subject to the 12 month limitation, but shall be reviewed and approved by DMAS staff on an individual basis. Examples of changing providers "for cause" may include but shall not be necessarily limited to:

a. Client has a special medical need which cannot be met in his service area or by his PCP.

b. Client has a pre existing relationship with a Medicaid provider rendering care for a special medical need.

c. Mutual decision by both client and provider to sever the relationship.

d. Provider or client moves to a new residence, causing transportation difficulties for the client.

e. Provider cannot establish a rapport with the client.

f. Performance or nonperformance of service to the client by a provider that is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care.

g. Other reasons as determined by DMAS through written policy directives.

2. The existing PCP shall continue to retain the client in the caseload, and provide services to the client until a new PCP is assigned or selected.

3. PCPs may elect to release MEDALLION clients from their caseloads for cause with review and approval by DMAS on a case by case basis. In such circumstances, subdivision F 2 of this section shall apply.

G. PCP referral process.

1. Clients shall contact their assigned PCP or designated covering provider to obtain a referral prior to seeking nonemergency care.

2. Emergency services and family planning services shall be provided without delay or referral. However, the emergency nature of the treatment shall be documented by the provider providing treatment and should be reported to the PCP after treatment is provided. Clients should inform the PCP of any emergency treatment received.

H. Enrollee rights.

1. Each primary care provider must comply with any and all applicable federal and state laws and regulations regarding enrollee rights including, but not limited to, the applicable sections of 42 CFR 438.100 et seq., Title VI of the Civil Rights Act of 1964, and other applicable laws regarding privacy and confidentiality, and ensure that their staff and affiliated providers take those rights into account when furnishing services to enrollees.

2. Each enrollee shall be free to exercise his rights, and the exercise of those rights shall not adversely affect the way the primary care provider or DMAS treats the enrollee.

12VAC30-120-290. ~~Providers of services.~~ (Repealed.)

Providers who may enroll to provide MEDALLION services include, but are not limited to, physicians of the following primary care specialties: general practice, family practice, internal medicine, and pediatrics. Federally qualified health centers and rural health clinics as defined in 42 CFR 405.2401), and certain clinics (as defined by 12VAC5-90-10) administered by local health departments may also serve as primary care providers. Exceptions may be as follows:

1. Providers specializing in obstetric/gynecologic care may enroll as MEDALLION providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

2. Physicians with subspecialties may enroll as MEDALLION providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

3. Other specialty physicians may enroll as PCPs under extraordinary, client specific circumstances when DMAS determines with the provider's and recipient's concurrence that the assignment would be in the client's best interests. Such circumstances may include, but are not limited to, the usual and customary practice of general medicine by a board certified specialist, maintenance of a pre existing patient physician relationship, or support of the special medical needs of the client.

4. DMAS or its designee shall review applications from physicians and other health care professionals to determine appropriateness of their participating as a MEDALLION PCP.

5. The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.

12VAC30-120-300. ~~MEDALLION provider requirements.~~ (Repealed.)

A. PCPs must require their clients to present their currently effective MEDALLION identification material upon presentation for services.

B. PCPs shall function as "gatekeeper" for assigned clients. Specific requirements shall include but are not necessarily limited to:

1. Providing patient management for the following services: physician, pharmacy, hospital inpatient and outpatient, laboratory, ambulatory surgical center, radiology, and durable medical equipment and supplies.

2. Providing or arranging for physician coverage 24 hours per day, seven days per week.

3. Determining the need for and authorizing when appropriate, all nonemergency care.

4. Being an EPSDT provider, or having a referral relationship with one, and providing or arranging for preventive health services for children under the age of 21 in accordance with the periodicity schedule recommended in the Guidelines for Health Supervision of the American Academy of Pediatrics, 1991.

5. Making referrals when appropriate, conforming to standard medical practices, to medical specialists or services as required. The referral duration shall be at the discretion of the PCP, and must be fully documented in the patient's medical record.

6. Coordinating inpatient admissions either by personally ordering the admission, or by referring to a specialist who may order the admission.

7. Maintaining a legibly written, comprehensive, and unified patient medical record for each client consistent with documentation requirements set forth in DMAS' Physician Manual.

8. Documenting in each client's record all authorizations for referred services.

9. Providing education and guidance to assigned clients for the purpose of teaching correct methods of accessing the medical treatment system and promoting good health practices.

10. Tracking and documenting any emergency care provided to clients.

11. Shall not refuse an assignment to, or otherwise discriminate against, any enrollee or potential enrollee on the basis of health status or need for health care services, or on the basis of race, color, or national origin, and shall not use any policy or practice that has the effect of discrimination on the basis of race, color, or national origin.

C. A PCP may not knowingly be affiliated with any of the following:

1. Any individual who is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation (48 CFR 9.400 et seq.) or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549.

2. An individual who is an affiliate of a person described in subdivision C 1 of this subsection whose relationship is as follows:

a. A director, officer, or partner of the PCP;

b. A person with beneficial ownership of 5.0% or more of the PCP's equity;

c. A person with an employment, consulting, or other arrangement with the PCP for the provision of items and services that are significant and material to the PCP's obligations under its contract with the state.

12VAC30-120-310. ~~Services exempted from MEDALLION referral requirements.~~ (Repealed.)

A. The following services shall be exempt from the referral requirements of MEDALLION:

1. Obstetrical and gynecological services (pregnancy and pregnancy related);

2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;

3. Family planning services;

4. Routine newborn services;

5. Annual or routine vision examinations (under age 21);

6. Emergency services;

7. EPSDT well-child exams;

8. Immunizations (health departments only);

9. All school health services provided pursuant to the Individuals with Disabilities Education Act (IDEA);

10. Services for the treatment of sexually transmitted diseases;

11. Targeted case management services;

12. Transportation services;

13. Pharmacy services;

14. Substance abuse treatment services; and

15. MR waiver services and MH community rehabilitation services.

B. While reimbursement for these services may not require a referral, an authorization, or a referral and an authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

12VAC30-120-320. ~~PCP payments.~~ (Repealed.)

A. DMAS shall pay for services rendered to MEDALLION clients through the existing fee for service methodology and a case management fee.

B. MEDALLION providers shall receive a monthly case management fee of $3.00 per client.

C. Individual PCPs and PCPs in Department of Health clinics may serve a maximum of 2,000 MEDALLION clients. Exceptions to this will be considered on a case by case basis predicated upon client needs.

D. Federally qualified health centers, rural health clinics, and Department of Health clinics enrolled as Medicaid providers are limited to no more than 10,000 enrolled recipients per clinic. Exceptions to this will be considered on a case by case basis predicated upon client needs.

12VAC30-120-330. ~~Utilization review.~~ (Repealed.)

~~DMAS shall review claims for services provided by or resulting from referrals by authorized PCPs. Claims review shall include, but not be limited to, review for the following:~~

~~1. Excessive or inappropriate services;~~

~~2. Unauthorized or excluded services; and~~

~~3. Analysis of possible trends in increases or reductions of services.~~

12VAC30-120-340. ~~Client and provider appeals.~~ (Repealed.)

~~A. Client appeals. Clients shall have the right of appeal of any adverse action taken by DMAS consistent with the provisions of Part I (12VAC30-110-10 et seq.) of 12VAC30-110.~~

~~B. Provider appeals. Providers shall have the right to appeal any adverse action taken by DMAS under this part pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

12VAC30-120-350. ~~Sanctions.~~ (Repealed.)

~~A. The sanctions, as described in § 1932(e)(1) of the Social Security Act (the Act) and listed in subsection B of this section, may be imposed by DMAS if the PCP:~~

~~1. Fails substantially to provide medically necessary services that the PCP is required to provide, under law or under its contract with DMAS, to an enrollee covered under the contract;~~

~~2. Imposes on enrollees premiums or charges that are in excess of the premiums or charges permitted under the Medicaid program;~~

~~3. Acts to discriminate among enrollees on the basis of their health status or need for health care services;~~

~~4. Misrepresents or falsifies information furnished to the Commonwealth;~~

~~5. Misrepresents or falsifies information furnished to an enrollee, potential enrollee, or health care provider;~~

~~6. Has distributed directly or indirectly, through any agent or independent contractor, marketing materials that have not been approved by DMAS or that contain false or materially misleading information; or~~

~~7. Has violated any of the other applicable requirements of § 1932 or § 1905 (t)(3) of the Act and any implementing regulations.~~

~~B. Section 1932(e)(2) of the Act provides for the Commonwealth to impose the following civil money penalties and other sanctions:~~

~~1. A maximum of $25,000 for each determination of failure to provide services, misrepresentations or false statements to enrollees, potential enrollees, or health care providers, or marketing violations;~~

~~2. A maximum of $100,000 for each determination of discrimination or misrepresentation or false statements to the Commonwealth;~~

~~3. A maximum of $15,000 for each recipient the Commonwealth determines was not enrolled because of a discriminatory practice (subject to a $100,000 overall limit); and~~

~~4. Up to $25,000 or double the amount of the excess charges (whichever is greater) for charging premiums or charges in excess of the amounts permitted under the Medicaid program. DMAS shall deduct the excess amount charged from the penalty and return it to the affected enrollees.~~

~~5. Termination. Either the PCP or DMAS may terminate the PCP's enrollment in the MEDALLION program at any time if either party determines that the other party has failed to perform any of its functions or duties under the addendum to the provider agreement (hereafter referred to as the addendum) between DMAS and the PCP. In such event, the party exercising this option shall notify the other party in writing of the intent to terminate the addendum and shall give the other party 30 days to correct the identified violation, breach or nonperformance of the addendum. If such violation, breach or nonperformance of the addendum is not satisfactorily addressed within this time period, the exercising party must notify the other party in writing of its intent to terminate the addendum at least 60 days prior to the proposed termination date. The termination date shall always be the last day of the month in which the 60th day falls. The addendum may be terminated by DMAS sooner than the time periods for notice specified in this subsection if DMAS determines that a recipient's health or welfare is jeopardized by continued enrollment under the care of the PCP. After DMAS notifies a PCP that it intends to terminate the contract, DMAS will give the entity's enrollees written notice of the state's intent to terminate the contract and will allow enrollees to disenroll immediately without cause.~~

~~6. Suspension of new enrollment, including default enrollment.~~

~~a. Whenever DMAS determines that the PCP is out of compliance with the addendum, it may suspend the PCP's right to enroll new recipients. DMAS, when exercising this option, shall notify the PCP in writing of its intent to suspend new enrollment at least 30 days prior to the beginning of the suspension period. The suspension period may be for any length of time specified by DMAS, or may be indefinite. The suspension period may extend up to any expiration date of the addendum.~~

~~b. DMAS may also suspend new enrollment or disenroll recipients in anticipation of the PCP not being able to comply with federal or state laws at its current enrollment level. Such suspension shall not be subject to the 30-day notification requirement. DMAS may notify~~

~~recipients of their PCP's noncompliance and provide an opportunity to enroll with another PCP.~~

~~7. Withholding of management or other payments and recovery of damage costs. DMAS may withhold portions of management or other fees or otherwise recover damages from the PCP as follows:~~

~~a. Whenever DMAS determines that the PCP has failed to perform an administrative function required under this contract, DMAS may withhold a portion of management or other fees to compensate for the damages which this failure has entailed. For the purposes of this section, "administrative function" is defined as any contract obligation other than the actual provision of contract services.~~

~~b. In any case under this contract where DMAS has the authority to withhold management or other fees, DMAS also shall have the authority to use all other legal processes for the recovery of damages.~~

~~8. Department initiated disenrollment. DMAS may reduce the maximum enrollment level or number of current enrollees whenever it determines that the PCP has:~~

~~a. Failed to provide or arrange for the provision of one or more of the services required under the addendum to the provider agreement, or~~

~~b. Failed to maintain or make available any records or reports required under the addendum which DMAS requires to determine whether the PCP is providing services as required. The PCP shall be given at least 30 days notice prior to DMAS taking any action set forth in this subsection.~~

~~9. Inappropriate service delivery. PCPs demonstrating a pattern of inappropriate provision of services may be subject to suspension of new enrollments, withholding, in full or in part, of management fees, addendum termination, or refusal to be offered the opportunity to participate as a PCP in a future time period.~~

Part VI
Medallion II

12VAC30-120-360. Definitions.

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO ~~or to the Primary Care Case Management (PCCM) program~~, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Early Intervention" means EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 as set forth in 12VAC30-50-131.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

2. Serious impairment to bodily functions, or

3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and MCO enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External Quality Review Organization" (EQRO) is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

"Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO ~~or PCCM~~.

~~"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.~~

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12VAC30-50-229.1.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

12VAC30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. DMAS reserves the right to exclude from participation in the Medallion II managed care program any ~~recipient~~ individual who has been consistently noncompliant with the policies and procedures of managed care or who is threatening to providers, MCOs, or DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. ~~Recipients~~ Individuals excluded from Medallion II through this provision may appeal the decision to DMAS.

B. The following individuals shall be excluded (as defined in 12VAC30-120-360) from participating in Medallion II or will be disenrolled from Medallion II if any of the following apply. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;

2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;

3. Individuals who are placed on spend-down;

4. Individuals who are participating in the family planning waiver, or in federal waiver programs for home-based and community-based Medicaid coverage prior to managed care enrollment;

5. Individuals who are participating in foster care or subsidized adoption programs;

6. Individuals under age 21 who are either enrolled in DMAS authorized treatment foster care programs as defined in 12VAC30-60-170 A, or who are approved for DMAS residential facility Level C programs as defined in 12VAC30-130-860;

7. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider (e.g., physician, hospital, midwife) does not participate with the enrollee's assigned MCO. Exclusion requests made during the third trimester

may be made by the ~~recipient~~ member, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;

8. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;

9. Individuals who receive hospice services in accordance with DMAS criteria;

10. Individuals with other comprehensive group or individual health insurance coverage, including Medicare, insurance provided to military dependents, and any other insurance purchased through the Health Insurance Premium Payment Program (HIPP);

11. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, at the scheduled time of MCO enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the MCO enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge. This exclusion reason shall not apply to ~~recipients~~ individuals admitted to the hospital while already enrolled in a department-contracted MCO;

12. Individuals who request exclusion during preassignment to an MCO or within a time set by DMAS from the effective date of their MCO enrollment, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less. The client's physician must certify the life expectancy;

13. Certain individuals between birth and age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;

14. Individuals who have an eligibility period that is less than three months;

15. Individuals who are enrolled in the Commonwealth's Title XXI SCHIP program;

16. Individuals who have an eligibility period that is only retroactive; and

17. Children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia.

C. Individuals enrolled with a MCO who subsequently meet one or more of the aforementioned criteria during MCO enrollment shall be excluded from MCO participation as determined by DMAS, with the exception of those who subsequently become ~~recipients~~ participants in the federal long-term care waiver programs, as otherwise defined elsewhere in this chapter, for home-based and community-based Medicaid coverage (AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimers, or as may be amended from time to time). These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

D. Medallion II managed care plans shall be offered to ~~recipients~~ individuals, and ~~recipients~~ individuals shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

E. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS, and shall be provided authorized medical care in accordance with DMAS' procedures after Medicaid eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted MCOs. These letters shall indicate a preassigned MCO, determined as provided in subsection F of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 30 days. ~~Recipients~~ Members who are enrolled in one mandatory MCO program who immediately become eligible for another mandatory MCO program are able to maintain consistent enrollment with their currently assigned MCO, if available. These ~~recipients~~ individuals will receive a notification letter including information regarding their ability to change health plans under the new program.

4. Any newborn whose mother is enrolled with an MCO at the time of birth shall be considered an enrollee of that same MCO for the newborn enrollment period. The newborn enrollment period is defined as the birth month plus two months following the birth month. This requirement does not preclude the enrollee, once he is assigned a Medicaid identification number, from disenrolling from one MCO to another in accordance with subdivision G 1 of this section.

The newborn's continued enrollment with the MCO is not contingent upon the mother's enrollment. Additionally, if the MCO's contract is terminated in whole or in part, the MCO shall continue newborn coverage if the child is born

while the contract is active, until the newborn receives a Medicaid number or for the newborn enrollment period, whichever timeframe is earlier. Infants who do not receive a Medicaid identification number prior to the end of the newborn enrollment period will be disenrolled. Newborns who remain eligible for participation in Medallion II will be reenrolled in an MCO through the preassignment process upon receiving a Medicaid identification number.

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous MCO without going through preassignment and selection.

F. Clients who do not select an MCO as described in subdivision E 3 of this section shall be assigned to an MCO as follows:

1. Clients are assigned through a system algorithm based upon the client's history with a contracted MCO.

2. Clients not assigned pursuant to subdivision 1 of this subsection shall be assigned to the MCO of another family member, if applicable.

3. All other clients shall be assigned to an MCO on a basis of approximately equal number by MCO in each locality.

4. ~~In areas where there is only one contracted MCO, recipients have a choice of enrolling with the contracted MCO or the PCCM program.~~ All eligible ~~recipients in areas where one contracted MCO exists, however,~~ members are automatically assigned to ~~the~~ a contracted MCO in their localities. Individuals are allowed 90 days after the effective date of new or initial enrollment to make a change ~~from either the contracted MCO to the PCCM program or vice versa~~.

5. DMAS shall have the discretion to utilize an alternate strategy for enrollment or transition of enrollment from the method described in this section for expansions to new client populations, new geographical areas, expansion through procurement, or any or all of these; such alternate strategy shall comply with federal waiver requirements .

G. Following their initial enrollment into an MCO ~~or PCCM program~~, ~~recipients~~ individuals shall be restricted to the MCO ~~or PCCM program~~ until the next open enrollment period, unless appropriately disenrolled or excluded by the department (as defined in 12VAC30-120-360).

1. During the first 90 calendar days of enrollment in a new or initial MCO, a client may disenroll from that MCO to enroll into another MCO ~~or into PCCM, if applicable,~~ for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.

2. During the remainder of the enrollment period, the client may only disenroll from one MCO into another MCO ~~or PCCM~~, if applicable, upon determination by DMAS that good cause exists as determined under subsection I of this section.

H. The department shall conduct an annual open enrollment for all Medallion II participants. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the ~~recipient~~ individual of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. ~~In areas with only one contracted MCO, recipients will be given the opportunity to select either the MCO or the PCCM program.~~ Enrollment selections will be effective on the first day of the next month following the open enrollment period. ~~Recipients~~ Individuals who do not make a choice during the open enrollment period will remain with their current MCO selection.

I. Disenrollment for cause may be requested at any time.

1. After the first 90 days of enrollment in an MCO, clients must request disenrollment from DMAS based on cause. The request may be made orally or in writing to DMAS and must cite the reasons why the client wishes to disenroll. Cause for disenrollment shall include the following:

a. ~~A recipient's~~ An individual's desire to seek services from a federally qualified health center which is not under contract with the ~~recipient's~~ member's current MCO, and the ~~recipient (i)~~ client requests a change to another MCO that subcontracts with the desired federally qualified health center ~~or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM~~;

b. Performance or nonperformance of service to the ~~recipient~~ individual by an MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;

c. Lack of access to a PCP or necessary specialty services covered under the State Plan or lack of access to providers experienced in dealing with the enrollee's health care needs;

d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO ~~or PCCM program, if applicable, or provider~~;

e. The enrollee moves out of the MCO's service area;

f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;

g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or

h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether cause exists for disenrollment. Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the enrollee files the request, in compliance with 42 CFR 438.56.

3. Cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

4. The DMAS determination concerning cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12VAC30-110-10 through 12VAC30-110-380.

5. The current MCO shall provide, within two working days of a request from DMAS, information necessary to determine cause.

6. Individuals enrolled with a MCO who subsequently meet one or more of the exclusions in subsection B of this section during MCO enrollment shall be disenrolled as appropriate by DMAS, with the exception of those who subsequently become ~~recipients~~ individuals into the AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimer's federal waiver programs for home-based and community-based Medicaid coverage. These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

Part I

General Provisions

12VAC30-141-10. Definitions.

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

"Act" means the Social Security Act.

"Adult caretaker relative" or "caretaker relative" means an individual who is age 18 or older, who is not the parent of, but who is related to, the child by blood or marriage, and who lives with and assumes responsibility for day-to-day care of the child in a place of residence maintained as his or their own home.

"Adverse action" means the denial of eligibility; failure to make a timely determination of eligibility; suspension or termination of enrollment; or delay, denial, reduction, suspension, or termination of health services, in whole or in part; provided, however, that determination of eligibility to participate in and termination of participation in the FAMIS Select program shall not constitute an adverse action.

"Agency" means a local department of social services, the central processing unit, or other entity designated by DMAS to make eligibility determinations for FAMIS.

"Agency error" means a person or persons received benefits to which they were not entitled as a result of an error on the part of an eligibility worker at a local department of social services or the central processing unit.

"Agent" means an individual designated in writing to act on behalf of a FAMIS Plan applicant or enrollee during the administrative review process.

"Applicant" means a child who has filed an application (or who has an application filed on his behalf) for child health insurance and is awaiting a determination of eligibility. A child is an applicant until his eligibility has been determined.

"Application for health insurance" means the form or forms developed and approved by the Department of Medical Assistance Services that are used for determining eligibility for Family Access to Medical Insurance Security Plan (FAMIS), FAMIS Plus (Children's Medicaid), for Medicaid for pregnant women, and for FAMIS MOMS.

"Authorized representative" means a person who is authorized to conduct the personal or financial affairs for an individual who is 18 years of age or older.

"Board" or "BMAS" means that policy board created by § 32.1-324 of the Code of Virginia to administer the plans established by the Social Security Act.

"CMSIP" means that original child health insurance program that preceded FAMIS.

"Central processing unit" or "CPU" means the private contractor that will determine eligibility for and administer part of the Family Access to Medical Insurance Security Plan or FAMIS.

"Child" means an individual under the age of 19 years.

"Competent individual" means a person who has not been judged by a court to be legally incapacitated.

"Comprehensive health insurance coverage" means health benefits coverage, which includes the following categories of services at a minimum: inpatient and outpatient hospital services; physician's surgical and medical services; and laboratory and radiological services.

"Conservator" means a person appointed by a court of competent jurisdiction to manage the estate and financial affairs of an incapacitated individual.

"Continuation of enrollment" means ensuring an enrollee's benefits are continued until completion of the review process, with the condition that should the enrollee not prevail in the review process, the enrollee shall be liable for the repayment of all benefits received during the review process.

"Director" means the individual, or his designee, specified in § 32.1-324 of the Code of Virginia with all of the attendant

duties and responsibilities to administer the State Plan for Medical Assistance and the State Plan for FAMIS.

"DMAS" or "department" means the Department of Medical Assistance Services.

"Enrollee" means a child who has been determined eligible to participate in FAMIS and is enrolled in the FAMIS program.

"External Quality Review Organization" means the independent contractor assigned by DMAS to handle quality reviews and to conduct final review of MCHIP adverse actions for FAMIS.

"Family" means parents, including adoptive and stepparents, and their children under the age of 19, who are living in the same household. Family shall not mean grandparents, other relatives, or legal guardians.

"Family," when used in the context of the FAMIS Select component, means a unit or group that has access to an employer's group health plan. Thus, it includes the employee and any dependents who can be covered under the employer's plan.

"Family income" means the total income of all family members in a household. Income includes, but is not necessarily limited to, before-tax earnings from a job, including cash, wages, salary, commissions, tips, self-employment net profits, Social Security, Retirement Survivor Disability Insurance (RSDI), veterans benefits, Railroad Retirement, disability workers' compensation, unemployment benefits, child support, alimony, spousal support, pensions, retirement benefits, settlement benefits, rental income, and lottery/bingo winnings. Income excludes public assistance program benefits such as SSI and TANF payments, foster care payments, general relief, loans, grants, or scholarships for educational expenses or earned income of a child who is a student.

"FAMIS" means the Family Access to Medical Insurance Security Plan.

"FAMIS Select" means an optional program available to children determined eligible for FAMIS, whereby DMAS provides premium assistance to the family to cover the child through a private or employer-sponsored health plan instead of directly through the FAMIS program.

"Federal poverty level" or "FPL" means that income standard as published annually by the U.S. Department of Health and Human Services in the Federal Register.

"Fee-for-service" means the traditional Medicaid health care delivery and payment system in which physicians and other providers receive a payment for each unit of service they provide.

"Fixed premium assistance amount" means a predetermined amount of premium assistance that DMAS will pay per child to a family who chooses to enroll its FAMIS eligible child in a private or employer-sponsored health plan. The fixed premium assistance amount will be determined annually by DMAS to ensure that the FAMIS Select program is cost-effective as compared to the cost of covering a child directly through the FAMIS program.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Group health plan" or "health insurance coverage" means that health care coverage as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)).

"Guardian" means a person appointed by a court of competent jurisdiction to be responsible for the affairs of an incapacitated individual, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, and therapeutic treatment, and if not inconsistent with an order of commitment, residence.

"Health Insurance for Children and Pregnant Women application" means the form or forms developed and approved by the Department of Medical Assistance Services that are used by local departments of social services and the FAMIS CPU for determining eligibility for Medicaid for poverty-level children and for the Family Access to Medical Insurance Security Plan (FAMIS).

"Incapacitated individual" means a person who, pursuant to an order of a court of competent jurisdiction, has been found to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements of his health, care, safety, or therapeutic needs without the assistance or protection of a guardian, or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator.

"Legally emancipated" means that the parents and child have gone through the court and a judge has declared that the parents have surrendered the right to care, custody, and earnings of the child and have renounced parental duties. A married minor is not emancipated unless a court has declared the married minor emancipated from his parents.

"LDSS" or "local department" means the local department of social services.

"Managed care health insurance plan" or "MCHIP" as defined in § 32.1-137.1 of the Code of Virginia means an arrangement for the delivery of health care in which a health carrier means under contract with DMAS for Title XXI delivery systems, undertakes to provide, arrange and pay for, or reimburse any of the costs of health care services for a covered person on a prepaid or insured basis, which contains one or more incentive arrangements, including any credential requirements intended to influence the cost of the health care services between the health carrier and one or more providers

and requires or creates benefit payment differential incentives for covered persons to use providers that are directly or indirectly managed, owned, under contract with or employed by the health carrier.

~~"Maternal and child health insurance application" means the form or forms developed and approved by the Department of Medical Assistance Services that are used by local departments of social services and the FAMIS CPU for determining eligibility for Medicaid for poverty level children and for the Family Access to Medical Insurance Security Plan (FAMIS).~~

"Member of a family," for purposes of determining whether the child is eligible for coverage under a state employee health insurance plan, means a parent or parents, including stepparents with whom the child is living if the stepparent claims the child as a dependent on the employee's federal tax return.

"Premium assistance" means the portion of the family's cost of participating in a private employer's health plan that DMAS will pay to cover the FAMIS-eligible children under the private or employer-sponsored plan if DMAS determines it is cost effective to do so.

~~"Primary care case management (PCCM)" means a system under which a physician acting as a primary care case manager furnishes case management services to FAMIS enrollees pursuant to a contract with DMAS.~~

~~"Primary care provider" or "PCP" means a physician enrolled in the PCCM program as a primary case manager.~~

"Private" or "employer-sponsored health insurance coverage"~~1~~ means a health insurance policy that is either purchased by an individual directly or through an employer. This component of FAMIS refers to the ability of DMAS to provide coverage to FAMIS-eligible children by providing premium assistance to families who enroll the FAMIS-eligible children in a private or employer-sponsored health plan.

"Provider" means the individual, facility or other entity registered, licensed, or certified, as appropriate, and enrolled by an MCHIP~~, a PCCM,~~ or in fee-for-service to render services to FAMIS enrollees eligible for services.

"Supplemental coverage" means coverage provided to FAMIS-eligible children covered under the FAMIS Select component so that they can receive all childhood immunizations included in the FAMIS benefits.

"Title XXI" means the federal State Children's Health Insurance Program as established by Subtitle J of the Balanced Budget Act of 1997.

"Virginia State Employee Health Insurance Plan" means a health insurance plan offered by the Commonwealth of Virginia to its employees.

~~1So in original.~~

12VAC30-141-20. Administration and general background.

A. The state shall use funds provided under Title XXI for obtaining coverage that meets the requirements for a State Child Health Insurance Plan (also known as Title XXI).

B. The DMAS director will have the authority to contract with entities for the purpose of establishing a centralized processing site, determining eligibility, enrolling eligible children into health plans, performing outreach, data collection, reporting, and other services necessary for the administration of the Family Access to Medical Insurance Security Plan and for employing state staff to perform Medicaid eligibility determinations on children referred by FAMIS staff.

C. Health care services under FAMIS shall be provided through MCHIPs~~, PCCMs,~~ and through fee-for-service or through any other ~~heath~~ health care delivery system deemed appropriate by the Department of Medical Assistance Services.

12VAC30-141-70. Review procedures.

A. At a minimum, the MCHIP review shall be conducted pursuant to written procedures as defined in § 32.1-137.6 of the Code of Virginia and as may be further defined by DMAS. Such procedures shall be subject to review and approval by DMAS.

B. The DMAS review shall be conducted pursuant to written procedures developed by DMAS.

C. The procedures in effect on the date a particular request for review is received by the MCHIP or DMAS shall apply throughout the review.

D. Copies of the procedures shall be promptly mailed by the MCHIP or DMAS to applicants and enrollees upon receipt of timely requests for review. Such written procedures shall include but not be limited to the following:

1. The right to representation by an attorney or other agent of the applicant's or enrollee's choice, but at no time shall the MCHIP, local department of social services, DSS, or DMAS be required to obtain or compensate attorneys or other agents acting on behalf of applicants or enrollees;

2. The right to timely review of their files and other applicable information relevant to the review of the decision;

3. The right to fully participate in the review process, whether the review is conducted in person or in writing, including the presentation of supplemental information during the review process;

4. The right to have personal and medical information and records maintained as confidential; and

5. The right to a written final decision within 90 calendar days of receipt of the request for review, unless the applicant or enrollee requests or causes a delay.

6. For eligibility and enrollment matters, if the applicant's or enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain, or regain maximum function, an applicant or enrollee will have the opportunity to expedited review. Under these conditions, a request for review shall result in a written final decision within three business days after DMAS receives, from the physician or health plan, the case record and information indicating that taking the time for a standard resolution of the review request could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain or regain maximum function, unless the applicant or enrollee or his authorized representative causes a delay.

7. For health services matters for FAMIS enrollees receiving services through MCHIPs, if the enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to expedited review. Under these conditions, a request for review shall result in a written decision by the external quality review organization within 72 hours from the time an enrollee requests expedited review, unless the applicant, enrollee, or authorized representative requests or causes a delay. If a delay is requested or caused by the applicant, enrollee, or authorized representative, then expedited review may be extended up to 14 calendar days.

8. For health services matters for FAMIS enrollees receiving services through fee-for-service ~~and PCCM~~, if the enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the enrollee's life, health or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to expedited review. Under these conditions, a request for review shall result in a written decision within 72 hours from the time an enrollee requests expedited review, unless the applicant, enrollee, or authorized representative requests or causes a delay. If a delay is requested or caused by the applicant, enrollee, or authorized representative, then expedited review may be extended up to 14 calendar days.

Part V
Benefits and Reimbursement

12VAC30-141-200. Benefit packages.

The Commonwealth's Title XXI State Plan utilizes two benefit packages within FAMIS as set forth in the FAMIS State Plan, as may be amended from time to time. One package is a modified Medicaid look-alike component offered through a fee-for-service program ~~and a primary care case management (PCCM) program~~; the other package is modeled after the state employee health plan and delivered by contracted MCHIPs.

12VAC30-141-500. Benefits reimbursement.

A. Reimbursement for the services covered under FAMIS fee-for-service ~~and PCCM~~ and MCHIPs shall be as specified in this section.

B. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, medical transportation, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical therapy/occupational therapy/speech-language therapy services, hospice services, school-based health services, and certain community-based mental health services shall be based on the Title XIX rates.

C. Reimbursement to MCHIPs shall be determined on the basis of the estimated cost of providing the MCHIP benefit package and services to an actuarially equivalent population. MCHIP rates will be determined annually and published 30 days prior to the effective date.

D. Exceptions.

1. Prior authorization is required after five visits in a fiscal year for physical therapy, occupational therapy and speech therapy provided by home health providers and outpatient rehabilitation facilities and for home health skilled nursing visits. Prior authorization is required after 26 visits for outpatient mental health visits in the first year of service and prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging, including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. Prior authorization for dental services will be based on the Title XIX prior authorization requirements for dental services.

2. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

3. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for inpatient mental health services other than by free standing psychiatric hospitals will be based on the Title XIX rates in effect for each hospital. Reimbursement will not include payments for disproportionate share or graduate medical education

payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

5. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency. Payments made will be final and there will be no retrospective cost settlements.

6. Reimbursement for outpatient substance abuse treatment services will be based on rates determined by DMAS for children ages 6 through 18. Payments made will be final and there will be no retrospective cost settlements.

7. Reimbursement for prescription drugs will be based on the Title XIX rates in effect. Reimbursements for Title XXI do not receive drug rebates as under Title XIX.

8. Reimbursement for covered prescription drugs for noninstitutionalized FAMIS recipients receiving the fee-for-service ~~or PCCM~~ benefits will be subject to review and prior authorization when their current number of prescriptions exceeds nine unique prescriptions within 180 days, and as may be further defined by the agency's guidance documents for pharmacy utilization review and the prior authorization program. The prior authorization process shall be applied consistent with the process set forth in 12VAC30-50-210 A 7.

12VAC30-141-570. Utilization control.

A. Each MCHIP shall implement a utilization review system as determined by contract with DMAS, or administered by DMAS.

B. For ~~both~~ the fee-for-service ~~and PCCM programs~~ program, DMAS shall use the utilization controls already established and operational in the State Plan for Medical Assistance.

C. DMAS may collect and review comprehensive data to monitor utilization after receipt of services.

12VAC30-141-660. Assignment to managed care.

A. Except for children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia, all eligible enrollees shall be assigned in managed care through the department or the central processing unit (CPU) under contract to DMAS. FAMIS recipients, during the preassignment period to ~~a PCP or~~ an MCHIP, shall receive Title XXI benefits via fee-for-service utilizing a FAMIS card issued by DMAS. After assignment to ~~a PCP or~~ an MCHIP, benefits and the delivery of benefits shall be administered specific to the ~~type of~~ managed care program in which the recipient is enrolled. DMAS shall contract with MCHIPs to deliver health care services for infants born to mothers enrolled in FAMIS for the month of birth plus two additional months regardless of the status of the newborn's application for FAMIS. If federal funds are not available for those months of coverage, DMAS shall use state funding only.

1. MCHIPs shall be offered to enrollees in ~~certain~~ all areas.

2. ~~In areas with one contracted MCHIP, all~~ All enrollees shall be assigned to ~~that~~ the contracted ~~MCHIP~~ MCHIPs.

3. ~~In areas with multiple contracted MCHIPs or in PCCM areas without contracted MCHIPs, enrollees~~ Enrollees shall be assigned through a random system algorithm; provided however, all children within the same family shall be assigned to the same MCHIP ~~or primary care provider (PCP), as is applicable~~.

4. ~~In areas without contracted MCHIPs, enrollees shall be assigned to the primary care case management program (PCCM) or into the fee-for-service component.~~ All children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program shall be assigned to the fee-for-service component.

5. Enrolled individuals ~~residing in PCCM areas without contracted MCHIPs or in areas with multiple MCHIPs,~~ will receive a letter indicating that they may select one of the contracted MCHIPs ~~or primary care provider (PCP) in the PCCM program, in each case, which~~ that serve such area. Enrollees who do not select an ~~MCHIP/PCP~~ MCHIP as described above, shall be assigned to an ~~MCHIP/PCP~~ MCHIP as described in subdivision 3 of this section.

6. Individuals assigned to an MCHIP ~~or a PCCM~~ who lose and then regain eligibility for FAMIS within 60 days will be re-assigned to their previous MCHIP ~~or PCP~~.

B. Following their initial assignment to ~~a MCHIP/PCP~~ an MCHIP, those enrollees shall be restricted to that ~~MCHIP/PCP~~ MCHIP until their next annual eligibility redetermination, unless appropriately disenrolled by the department.

1. During the first 90 calendar days of managed care assignment, an enrollee may request reassignment for any reason. Such reassignment shall be effective no later than the first day of the second month after the month in which the enrollee requests reassignment.

2. ~~If multiple MCHIPs exist, enrollees~~ Enrollees may only request reassignment to another MCHIP serving that geographic area. ~~In PCCM areas, an enrollee may only request reassignment to another PCP serving that geographic area. In areas with only one MCHIP, enrollees may request reassignment to fee-for-service.~~

3. After the first 90 calendar days of the assignment period, the enrollee may only be reassigned from one ~~MCHIP/PCP~~ MCHIP to another ~~MCHIP/PCP or to fee-for-service in areas with only one~~ MCHIP upon determination by DMAS that good cause exists pursuant to subsection C of this section.

C. Disenrollment for good cause may be requested at any time.

1. After the first 90 days of assignment in managed care, enrollees may request disenrollment from DMAS based on good cause. The request must be made in writing to DMAS and cite the reasons why the enrollee wishes to be

reassigned. The department shall establish procedures for good cause reassignment through written policy directives.

2. DMAS shall determine whether good cause exists for reassignment.

Part VII
FAMIS MOMS

12VAC30-141-670. Definitions.

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

"Act" means the Social Security Act.

"Adult caretaker relative" or "caretaker relative" means an individual who is age 18 or older, who is not the parent of but who is related to the child applicant by blood or marriage, and who lives with and assumes responsibility for day-to-day care of the child applicant in a place of residence maintained as his or their own home.

"Adverse action" means the denial of eligibility; failure to make a timely determination of eligibility; suspension or termination of enrollment; or delay, denial, reduction, suspension, or termination of health services, in whole or in part.

"Agency" means a local department of social services, the central processing unit, or other entity designated by DMAS to make eligibility determinations for FAMIS MOMS.

"Agency error" means a person or persons received benefits to which they were not entitled as a result of an error on the part of an eligibility worker at a local department of social services or the central processing unit.

"Agent" means an individual designated in writing to act on behalf of a FAMIS MOMS Plan applicant or enrollee during the administrative review process.

"Applicant" means a pregnant woman who has filed an application (or who has an application filed on her behalf) for health insurance and is awaiting a determination of eligibility. A pregnant woman is an applicant until her eligibility has been determined.

"Application for health insurance" means the form or forms developed and approved by the Department of Medical Assistance Services that are used for determining eligibility for Medicaid for poverty level children, for the Family Access to Medical Insurance Security Plan (FAMIS) for children, for Medicaid for pregnant women, and for FAMIS MOMS coverage for pregnant women.

"Authorized representative" means a person who is authorized to conduct the personal or financial affairs for an individual who is 18 years of age or older.

"Board" or "BMAS" means that policy board created by § 32.1-324 of the Code of Virginia to administer the plans established by the Social Security Act.

"Central processing unit" or "CPU" means the private contractor that will determine eligibility for and administer part of the FAMIS MOMS Plan.

"Child" means an individual under the age of 19 years.

"Competent individual" means a person who has not been judged by a court to be legally incapacitated.

"Comprehensive health insurance coverage" means health benefits coverage, which includes the following categories of services at a minimum: inpatient and outpatient hospital services, physician's surgical and medical services, and laboratory and radiological services.

"Conservator" means a person appointed by a court of competent jurisdiction to manage the estate and financial affairs of an incapacitated individual.

"Continuation of enrollment" means ensuring an enrollee's benefits are continued until completion of the review process, with the condition that should the enrollee not prevail in the review process, the enrollee shall be liable for the repayment of all benefits received during the review process.

"Director" means the individual, or his designee, specified in § 32.1-324 of the Code of Virginia with all of the attendant duties and responsibilities to administer the State Plan for Medical Assistance and the State Plan for Title XXI.

"DMAS" or "department" means the Department of Medical Assistance Services.

"Enrollee" means a pregnant woman who has been determined eligible to participate in FAMIS MOMS and is enrolled in the FAMIS MOMS program.

"External quality review organization" means the independent contractor assigned by DMAS to handle quality reviews and to conduct final review of MCHIP adverse actions for FAMIS MOMS.

"Family" for a pregnant woman under the age of 21, means parents, including adoptive parents, if they are all residing together and the spouse of the pregnant woman if the woman is married and living with her spouse, as well as any children under the age of 21 the woman may have.

For a pregnant woman over the age of 21, "family" means her spouse, if married and living together, as well as any children under the age of 21 the pregnant woman may have.

"Family income" means the total income of all family members in a household. Income includes, but is not necessarily limited to, before-tax earnings from a job, including cash, wages, salary, commissions, tips, self-employment net profits, Social Security, Retirement Survivor Disability Insurance (RSDI), veterans benefits, Railroad Retirement, disability workers' compensation, unemployment benefits, child support, alimony, spousal support, pensions, retirement benefits, settlement benefits, rental income, and lottery/bingo winnings. Income excludes public assistance program benefits such as SSI and TANF payments, foster care payments, general relief, loans, grants, or scholarships

for educational expenses or earned income of a child who is a student.

"FAMIS" means the Family Access to Medical Insurance Security Plan.

"FAMIS MOMS" means the Title XXI program available to eligible pregnant women.

"Federal poverty level" or "FPL" means that income standard as published annually by the U.S. Department of Health and Human Services in the Federal Register.

"Fee-for-service" means the traditional Medicaid health care delivery and payment system in which physicians and other providers receive a payment for each unit of service they provide.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to herself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Group health plan" or "health insurance coverage" means that health care coverage as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)).

"Guardian" means a person appointed by a court of competent jurisdiction to be responsible for the affairs of an incapacitated individual, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, and therapeutic treatment, and, if not inconsistent with an order of commitment, residence.

"Incapacitated individual" means a person who, pursuant to an order of a court of competent jurisdiction, has been found to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements of her health, care, safety, or therapeutic needs without the assistance or protection of a guardian, or (ii) manage property or financial affairs or provide for her support or for the support of her legal dependents without the assistance or protection of a conservator.

"Legally emancipated" means that the parents and child have gone through the court and a judge has declared that the parents have surrendered the right to care, custody, and earnings of the child and have renounced parental duties. A married minor is not emancipated unless a court has declared the married minor emancipated from her parents.

"LDSS" or "local department" means the local department of social services.

"Managed care health insurance plan" or "MCHIP" as defined in § 32.1-137.1 of the Code of Virginia means an arrangement for the delivery of health care in which a health carrier under contract with DMAS for Title XXI delivery systems undertakes to provide, arrange and pay for, or reimburse any of the costs of health care services for a covered person on a prepaid or insured basis, which contains one or more incentive arrangements, including any credential requirements intended to influence the cost of the health care services between the health carrier and one or more providers and requires or creates benefit payment differential incentives for covered persons to use providers that are directly or indirectly managed, owned, under contract with or employed by the health carrier.

"Member of a family," for purposes of determining whether the applicant is eligible for coverage under a state employee health insurance plan, means a spouse, parent or parents, including stepparents with whom the child is living if the stepparent claims the child as a dependent on the employee's federal tax return.

"Pregnant woman" means a woman of any age who is medically determined to be pregnant. The pregnant woman definition is met from the first day of the earliest month that the medical practitioner certifies as being a month in which the woman was pregnant, through the last day of the month in which the 60th day occurs, following the last day of the month in which her pregnancy ended, regardless of the reason the pregnancy ended.

~~"Primary care case management (PCCM)" means a system under which a physician acting as a primary care case manager furnishes case management services to FAMIS MOMS enrollees pursuant to a contract with DMAS.~~

~~"Primary care provider" or "PCP" means a physician enrolled in the PCCM program as a primary case manager.~~

"Provider" means the individual, facility, or other entity registered, licensed, or certified, as appropriate, and enrolled by an MCHIP~~, a PCCM,~~ or in fee-for-service to render services to FAMIS MOMS enrollees eligible for services.

"Title XXI" means the federal State Children's Health Insurance Program as established by Subtitle J of the Balanced Budget Act of 1997.

"Virginia State Employee Health Insurance Plan" means a health insurance plan offered by the Commonwealth of Virginia to its employees.

12VAC30-141-680. Administration and general background.

A. The state shall use funds provided under Title XXI for obtaining coverage that meets the requirements of Title XXI of the Social Security Act and any waiver of federal regulations approved by the Centers for Medicare and Medicaid Services.

B. The DMAS director will have the authority to contract with entities for the purpose of establishing a centralized processing site, determining eligibility, enrolling eligible pregnant women into health plans, performing outreach, data collection, reporting, and other services necessary for the administration of the FAMIS MOMS program; and for employing state staff to perform Medicaid eligibility determinations on pregnant women referred by the contractor's staff.

C. Health care services under FAMIS MOMS shall be provided through MCHIPs~~, PCCMs,~~ and fee-for-service or through any other ~~heath~~ health care delivery system deemed appropriate by the Department of Medical Assistance Services.

12VAC30-141-730. Review procedures.

A. At a minimum, the MCHIP review shall be conducted pursuant to written procedures as defined in § 32.1-137.6 of the Code of Virginia and as may be further defined by DMAS. Such procedures shall be subject to review and approval by DMAS.

B. The DMAS review shall be conducted pursuant to written procedures developed by DMAS.

C. The procedures in effect on the date a particular request for review is received by the MCHIP or DMAS shall apply throughout the review.

D. Copies of the procedures shall be promptly mailed by the MCHIP or DMAS to applicants and enrollees upon receipt of timely requests for review. Such written procedures shall include but not be limited to the following:

1. The right to representation by an attorney or other agent of the applicant's or enrollee's choice, but at no time shall the MCHIP, local department of social services, DSS, or DMAS be required to obtain or compensate attorneys or other agents acting on behalf of applicants or enrollees;

2. The right to timely review of their files and other applicable information relevant to the review of the decision;

3. The right to fully participate in the review process, whether the review is conducted in person or in writing, including the presentation of supplemental information during the review process;

4. The right to have personal and medical information and records maintained as confidential; and

5. The right to a written final decision within 90 calendar days of receipt of the request for review, unless the applicant or enrollee requests or causes a delay.

E. For eligibility and enrollment matters, if the applicant's or enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain, or regain maximum function, an applicant or enrollee will have the opportunity to expedited review. Under these conditions, a request for review shall result in a written final decision within three business days after DMAS receives, from the physician or health plan, the case record and information indicating that taking the time for a standard resolution of the review request could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain or regain maximum function, unless the applicant or enrollee or her authorized representative causes a delay.

F. For health services matters for FAMIS MOMS enrollees receiving services through MCHIPs, if the enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to expedited review. Under these conditions, a request for review shall result in a written decision by the external quality review organization within 72 hours from the time an enrollee requests expedited review, unless the applicant, enrollee, or authorized representative requests or causes a delay. If a delay is requested or caused by the applicant, enrollee, or authorized representative, then expedited review may be extended up to 14 calendar days.

G. For health services matters for FAMIS MOMS enrollees receiving services through fee-for-service ~~or PCCM~~, if the enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the enrollee's life, health or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to expedited review. Under these conditions, a request for review shall result in a written decision within 72 hours from the time an enrollee requests expedited review, unless the applicant, enrollee, or authorized representative requests or causes a delay. If a delay is requested or caused by the applicant, enrollee, or authorized representative, then expedited review may be extended up to 14 calendar days.

12VAC30-141-830. Benefits reimbursement.

A. Reimbursement for the services covered under FAMIS MOMS fee-for-service ~~and PCCM~~ and MCHIPs shall be as specified in this section.

B. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, medical transportation, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical therapy/occupational therapy/speech-language therapy services, hospice services, school-based health services, and certain community-based mental health services shall be based on the Title XIX rates.

C. Reimbursement to MCHIPs shall be determined on the basis of the estimated cost of providing the MCHIP benefit package and services to an actuarially equivalent population. MCHIP rates will be determined annually and published 30 days prior to the effective date.

D. Exceptions.

1. Prior authorization is required after five visits in a fiscal year for physical therapy, occupational therapy and speech therapy provided by home health providers and outpatient rehabilitation facilities and for home health skilled nursing visits. Prior authorization is required after five visits for

outpatient mental health visits in the first year of service and prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging, Computer Axial Tomography scans, or Positron Emission Tomography scans.

2. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

3. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for inpatient mental health services other than by free standing psychiatric hospitals will be based on the Title XIX rates in effect for each hospital. Reimbursement will not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

5. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency. Payments made will be final and there will be no retrospective cost settlements.

6. Reimbursement for outpatient substance abuse treatment services will be based on rates determined by DMAS for children ages 6 through 18. Payments made will be final and there will be no retrospective cost settlements.

7. Reimbursement for prescription drugs will be based on the Title XIX rates in effect. Reimbursements for Title XXI do not receive drug rebates as under Title XIX.

8. Reimbursement for covered prescription drugs for non-institutionalized FAMIS MOMS recipients receiving the fee-for-service ~~or PCCM~~ benefits will be subject to review and prior authorization when their current number of prescriptions exceeds nine unique prescriptions within 180 days, and as may be further defined by the agency's guidance documents for pharmacy utilization review and the prior authorization program. The prior authorization process shall be applied consistent with the process set forth in 12VAC30-50-210 A 7.

12VAC30-141-850. Utilization control.

A. Each MCHIP shall implement a utilization review system as determined by contract with DMAS, or administered by DMAS.

B. For ~~both~~ the fee-for-service ~~and PCCM programs~~ program, DMAS shall use the utilization controls already established and operational in the State Plan for Medical Assistance.

C. DMAS may collect and review comprehensive data to monitor utilization after receipt of services.

12VAC30-141-880. Assignment to managed care.

A. All eligible enrollees shall be assigned in managed care through the department or the central processing unit (CPU) under contract to DMAS. FAMIS MOMS recipients, during the preassignment period to ~~a PCP or~~ an MCHIP, shall receive Medicaid-like benefits via fee-for-service utilizing a FAMIS MOMS card issued by DMAS. After assignment to ~~a PCP or~~ an MCHIP, benefits and the delivery of benefits shall be administered specific to the ~~type of~~ managed care program in which the recipient is enrolled.

1. MCHIPs shall be offered to enrollees in ~~certain~~ all areas.

2. ~~In areas with one contracted MCHIP, all~~ All enrollees shall be assigned to that contracted MCHIP.

3. ~~In areas with multiple contracted MCHIPs or in PCCM areas without contracted MCHIPs, enrollees~~ Enrollees shall be assigned through a random system algorithm.

~~4. In areas without contracted MCHIPs, enrollees shall be assigned to the primary care case management program (PCCM) or into the fee-for-service component.~~

~~5.~~ 4. Enrolled individuals ~~residing in PCCM areas without contracted MCHIPs or in areas with multiple MCHIPs~~ will receive a letter indicating that they may select one of the contracted MCHIPs ~~or primary care provider (PCP) in the PCCM program, in each case, which~~ that serve such area. Enrollees who do not select an ~~MCHIP/PCP~~ MCHIP as described above, shall be assigned to an ~~MCHIP/PCP~~ MCHIP as described in subdivision 3 of this subsection.

6. Individuals assigned to an MCHIP ~~or a PCCM~~ who lose and then regain eligibility for FAMIS MOMS within 60 days will be reassigned to their previous MCHIP ~~or PCP~~.

B. Following their initial assignment to ~~a MCHIP/PCP~~ an MCHIP, those enrollees shall be restricted to that ~~MCHIP/PCP~~ MCHIP until their next annual eligibility redetermination, unless appropriately disenrolled by the department.

1. During the first 90 calendar days of managed care assignment, an enrollee may request reassignment for any reason from that ~~MCHIP/PCP~~ MCHIP to another ~~MCHIP/PCP~~ MCHIP serving that geographic area. Such reassignment shall be effective no later than the first day of the second month after the month in which the enrollee requests reassignment.

~~2. Reassignment is available only in areas with the PCCM program or where multiple MCHIPs exist. If multiple MCHIPs exist, enrollees may only request reassignment to another MCHIP serving that geographic area. In PCCM areas, an enrollee may only request reassignment to another PCP serving that geographic area.~~

~~3.~~ 2. After the first 90 calendar days of the assignment period, the enrollee may only be reassigned from one ~~MCHIP/PCP~~ MCHIP to another ~~MCHIP/PCP~~ MCHIP upon determination by DMAS that good cause exists pursuant to subsection C of this section.

C. Disenrollment for good cause may be requested at any time.

1. After the first 90 days of assignment in managed care, enrollees may request disenrollment from DMAS based on good cause. The request must be made in writing to DMAS and cite the reasons why the enrollee wishes to be reassigned. The department shall establish procedures for good cause reassignment through written policy directives.

2. DMAS shall determine whether good cause exists for reassignment.

D. Exclusion for assignment to a MCHIP. The following individuals shall be excluded from assignment to a MCHIP. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified time frame of the effective date of their MCHIP enrollment. Exclusion may be granted only if the member's obstetrical provider (physician or hospital) does not participate with the enrollee's assigned MCHIP. Exclusion requests made during the third trimester may be made by the enrollee, MCHIP, or provider. DMAS shall determine if the request meets the criteria for exclusion.

VA.R. Doc. No. R13-3371; Filed May 22, 2013, 11:12 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-15. Regulations Governing Delegation to an Agency Subordinate (amending 18VAC90-15-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 17, 2013.

Effective Date: August 2, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations and the authority to delegate an informal conference to an agency subordinate.

Purpose: One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. Delegation of informal conferences to an agency subordinate, who is either a former board member or former board staff, allows the Board of Nursing to bring closure to cases to protect the health and safety of the public.

In § 2.2-4019 of the Code of Virginia, provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case, including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." While certain standard of care cases continue to be heard by board members appointed to a special conference committee, a decision to delegate cases that may involve harm or injury to a patient must be approved by the board president. The ability to have the executive director make decisions on delegation will facilitate scheduling of proceedings before an agency subordinate, thus ensuring resolution in a timelier manner and reserving board member time for hearing more serious matters.

Rationale for Using Fast-Track Process: The amendment is less restrictive and not controversial. Professional staff for the board already determines which cases should be heard by an agency subordinate. The board unanimously agreed that the additional step of getting approval by the board president for delegating certain cases is unnecessary.

Substance: The amendment allows approval by the president or the executive director of the board for delegation to an agency subordinate cases that involve injury or harm to a patient.

Issues: The primary advantage to the public is more timely resolution of disciplinary cases. There are no disadvantages.

The advantage to the Commonwealth is facilitation of the delegation process and preservation of board member time for proceedings that involve more serious allegations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend its regulations that set the rules for delegation to an agency subordinate by adding the executive director of the Board as an entity that has the power to delegate.

Result of Analysis. Benefits likely outweigh costs for these proposed regulations.

Estimated Economic Impact. Current regulations state that cases that involve serious injury or harm to a patient may not be delegated to an agency subordinate except when such delegation is approved by the president of the Board. The Board proposes to add the executive director of the Board as a second entity who can approve delegation. No entity is likely to incur any costs on account of this regulatory change. To the extent that this change allows disciplinary cases to be resolved more quickly, both regulated entities and individuals who have filed complaints will likely benefit.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that there are no good estimates of how many entities will be affected by this proposed change.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulations.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur costs on account of this proposed change.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur costs on account of this proposed change.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The Board of Nursing concurs with the economic impact analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-15, Regulations Governing Delegation to an Agency Subordinate.

Summary:

The amendment permits the executive director of the board to delegate to an agency subordinate cases that involve injury or harm to a patient.

18VAC90-15-20. Criteria for delegation.

Cases that involve intentional or negligent conduct that caused serious injury or harm to a patient may not be delegated to an agency subordinate, except as may be approved by the president or executive director of the board.

VA.R. Doc. No. R13-3545; Filed May 23, 2013, 1:23 p.m.

Final Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-10, 18VAC90-20-220; adding 18VAC90-20-221, 18VAC90-20-222).**

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

Effective Date: August 1, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments establish requirements for continuing competency activities or courses in order to renew an active license as a registered nurse or a practical nurse each biennium. The options available include a refresher course, a post-licensure academic course, current specialty certification, research and teaching, active practice for 640 hours and 15 hours of courses, or 30 hours of approved courses. The entities and organizations that can recognize or approve a continuing education provider are listed in the regulation.

The regulations provide an exemption for nurses who have an active license as a nurse practitioner and for the second license if someone is licensed as an RN and LPN. Finally, the regulation includes a requirement for documentation of completion to be maintained for two years following renewal, and the documentation required for each type of activity or requirement is specified.

Changes to the proposed regulation in the final adoption were made in response to public comment and include (i) a definition for "contact hour," (ii) deletion of an inaccurate phrase in the definition of "national certifying organization," (iii) additional activities that may be counted for continuing competency hours, and (iv) additions to the listing of approved providers of continuing education.

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.

Part I
General Provisions

18VAC90-20-10. Definitions.

In addition to words and terms defined in § 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by the National League for Nursing Accrediting Commission (NLNAC) or by the Commission on Collegiate Nursing Education (CCNE).

"Active practice" means activities performed, whether or not for compensation, for which an active license to practice nursing is required.

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in Article 2 (18VAC90-20-70 et seq.) of Part II of this chapter.

["Contact hour" means 50 minutes of continuing education coursework or activity.]

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"NCLEX" means the National Council Licensing Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area [~~and is accredited by a national body recognized by NCSBN~~].

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia State Board of Education or the appropriate governmental credentialing agency.

"Preceptor" means a licensed health care provider who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting.

"Primary state of residence" means the state of a person's declared fixed permanent and principal home or domicile for legal purposes.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

18VAC90-20-220. Renewal of licenses.

A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.

B. ~~No less than 30 days prior to the last day of the licensee's birth month, a notice for renewal of license shall be mailed by the board to the last known address of each licensee, who is currently licensed~~ After [~~insert date~~ August 1, 2015,] a nurse shall be required to meet the requirements for continued

competency set forth in 18VAC90-20-221 in order to renew an active license.

C. A notice for renewal of license shall be sent by the board to the last known address of the licensee. The licensee shall complete the renewal form and submit it with the required fee.

D. Failure to receive the renewal form shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

E. The license shall automatically lapse if the licensee fails to renew by the expiration date.

F. Any person practicing nursing during the time a license has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-3008 of the Code of Virginia.

G. Upon renewal, all licensees shall declare their primary state of residence. If the declared state of residence is another compact state, the licensee is not eligible for renewal.

18VAC90-20-221. Continued competency requirements for renewal of an active license.

A. In order to renew an active nursing license, a licensee shall complete at least one of the following learning activities or courses:

1. Current specialty certification by a national certifying organization, as defined in 18VAC90-20-10;

2. Completion of a minimum of three credit hours of post-licensure academic education relevant to nursing practice, offered by a regionally accredited college or university;

3. A board-approved refresher course in nursing;

4. Completion of nursing-related, evidence-based practice project or research study;

5. Completion of publication as the author or co-author during a renewal cycle;

6. Teaching [or developing] a nursing-related course resulting in no less than three semester hours of college credit [, a 15-week course,] or specialty certification;

7. Teaching [or developing] nursing-related continuing education courses for up to 30 contact hours;

8. Fifteen contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing and 640 hours of active practice as a nurse; or

9. Thirty contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing.

B. To meet requirements of subdivision A 8 or 9 of this section, workshops, seminars, conferences, or courses shall be offered by a provider recognized or approved by one of the following:

1. American Nurses Credentialing Center (ANCC)/American Nurses Association (ANA);

2. National Council of State Boards of Nursing (NCSBN);

3. Area Health Education Centers (AHEC) in any state in which the AHEC is a member of the National AHEC Organization;

4. Any state nurses association;

5. National League for Nursing (NLN);

6. National Association for Practical Nurse Education and Service (NAPNES);

7. National Federation of Licensed Practical Nurses (NFLPN);

8. A licensed health care facility, agency, or hospital;

9. [A health care provider association;

10. Regionally or nationally accredited colleges or universities;

11.] The American Heart Association [, the American Health and Safety Institute,] or the American Red Cross for courses in advanced resuscitation; or

[~~10.~~ 12.] Virginia Board of Nursing or any state board of nursing.

C. Dual licensed persons.

1. Those persons dually licensed by this board as a registered nurse and a licensed practical nurse shall only meet one of the continued competency requirements as set forth in subsection A of this section.

2. Registered nurses who also hold an active license as a nurse practitioner shall only meet the requirements of 18VAC90-30-105 and, for those with prescriptive authority, 18VAC90-40-55.

D. A licensee is exempt from the continued competency requirement for the first renewal following initial licensure by examination or endorsement.

E. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee 60 days prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

F. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

G. Continued competency activities or courses required by board order in a disciplinary proceeding shall not be counted as meeting the requirements for licensure renewal.

18VAC90-20-222. Documenting compliance with continued competency requirements.

A. All licensees are required to maintain original documentation of completion for a period of two years following renewal and to provide such documentation within 30 days of a request from the board for proof of compliance.

B. Documentation of compliance shall be as follows:

1. Evidence of national certification shall include a copy of a certificate that includes name of licensee, name of certifying body, date of certification, and date of certification expiration. Certification shall be initially attained during the licensure period, have been in effect during the entire licensure period, or have been recertified during the licensure period.

2. Evidence of post-licensure academic education shall include a copy of transcript with the name of the licensee, name of educational institution, date of attendance, name of course with grade, and number of credit hours received.

3. Evidence of completion of a board-approved refresher course shall include written correspondence from the provider with the name of the licensee, name of the provider, and verification of successful completion of the course.

4. Evidence of completion of a nursing research or project shall include an abstract or summary, the name of the licensee, role of the licensee as principal or coprincipal investigator, date of completion, statement of the problem, research or project objectives, methods used, and summary of findings.

5. Evidence of authoring or co-authoring a published nursing-related article, paper, book, or book chapter, which shall include a copy of the publication to include the name of the licensee and publication date.

6. Evidence of teaching a course for college credit shall include documentation of the course offering, indicating instructor, course title, course syllabus, and the number of credit hours. Teaching a particular course may only be used once to satisfy the continued competency requirement unless the course offering and syllabus has changed.

7. Evidence of teaching a course for continuing education credit shall include a written attestation from the director of the program or authorizing entity including the date or dates of the course or courses and the number of contact hours awarded. If the total number of contact hours totals less than 30, the licensee shall obtain additional hours in continuing learning activities or courses.

8. Evidence of contact hours of continuing learning activities or courses shall include the name of the licensee [,] title of educational activity, name of the provider, number of contact hours, and date of activity.

9. Evidence of 640 hours of active practice in nursing shall include documentation satisfactory to the board of the name of the licensee, number of hours worked in calendar or fiscal year, name and address of employer, and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency.

VA.R. Doc. No. R10-2363; Filed May 15, 2013, 1:44 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-181).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 17, 2013.

Effective Date: August 2, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations.

Article 6 (§ 54.1-3030 et seq.) of Chapter 30 of Title 54.1 of the Code of Virginia establishes the legal framework for Virginia's participation in the Nurse Licensure Compact.

Purpose: Since Virginia regulations for participation in the Nurse Licensure Compact need to be consistent with the model rules and regulations, the amendment is adopted under a fast-track action. Permitting practice for 90 days by a nurse moving from one compact state to another will ensure sufficient time to process documentation and avoid a gap in the licensure privilege. Nurses moving to Virginia will be able to begin employment without concern that the transfer to a new party state cannot be accomplished within the current 30-day window. The ability to practice for 90 days during the processing of the nurses's application may modestly increase the availability of nursing care for the health and safety of patients in Virginia.

Rationale for Using Fast-Track Process: The amendment is less restrictive, conforming to the model rules of the compact and, therefore, is not controversial.

Substance: 18VAC90-20-181 is amended to allow a nurse who is changing primary state of residence to practice under the former party state license and multistate licensure privilege for a period not to exceed 90 days rather than the current limitation of 30 days.

Issues: The primary advantage to the public is the potential increase in the employment of nurses moving from another compact state into Virginia. There are no disadvantages to the public.

The advantage to the Commonwealth is consistency with the model rules of the compact. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board Nursing (Board) proposes to amend its regulations so that nurses who have a license to practice in another state that

is part of the multistate compact, and who are applying for licensure in Virginia, may practice in Virginia for up to 90 days while awaiting their Virginia licensure application approval.

Result of Analysis. Benefits likely outweigh costs for this proposed regulatory change.

Estimated Economic Impact. Currently, nurses who are licensed to practice nursing in another state that is part of the multistate compact can practice for 30 days in Virginia while they await approval of their application for Virginia licensure. The Board proposes to extend the time that licensed nurses can practice while awaiting Virginia licensure to 90 days and report that this will allow Virginia regulations to conform to the multistate compact rules. Affected nurses will benefit from this extension as it will allow them to continue earning a living if their application takes more than 30 days to process. No entity should be adversely affected by this change because it would only apply to nurses who are in good standing with the licensure board in their originating state.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that 3,355 registered nurses and 416 licensed practical nurses were licensed by endorsement in 2012. DHP estimates that about half of these individuals would be affected by these proposed regulations since almost half of states participate in the Nurse Licensure Compact.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No affected small business is likely to incur costs on account of these proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No affected small business is likely to incur costs on account of these proposed regulations.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-20, Regulations Governing the Practice of Nursing.

Summary:

The amendments extend the maximum time period from 30 days to 90 days that nurses who (i) have a license to practice in another state that is part of the multistate compact and (ii) are applying for licensure in Virginia can practice in Virginia while waiting for approval of their Virginia licensure application.

18VAC90-20-181. Issuance of a license with a multistate licensure privilege.

A. In order to be issued a license with a multistate licensure privilege by the board, a nurse currently licensed in Virginia or a person applying for licensure in Virginia shall submit a declaration stating that his primary residence is in Virginia. Evidence of a primary state of residence may be required to include but not be limited to:

1. A driver's license with a home address;

2. A voter registration card displaying a home address;

3. A federal or state tax return declaring the primary state of residence;

4. A Military Form No. 2058 - state of legal residence; or

5. A W-2 from the United States government or any bureau, division, or agency thereof indicating the declared state of residence.

B. A nurse on a visa from another country applying for licensure in Virginia may declare either the country of origin or Virginia as the primary state of residence. If the foreign country is declared as the primary state of residence, a single state license shall be issued by Virginia.

C. A nurse changing the primary state of residence from another party state to Virginia may continue to practice under the former party state license and multistate licensure privilege during the processing of the nurse's licensure

application by the board for a period not to exceed ~~30~~ 90 days.

1. If a nurse is under a pending investigation by a former home state, the licensure application in Virginia shall be held in abeyance and the ~~30-day~~ 90-day authorization to practice stayed until resolution of the pending investigation.

2. A license issued by a former party state shall no longer be valid upon issuance of a license by the board.

3. If the board denies licensure to an applicant from another party state, it shall notify the former home state within 10 business days, and the former home state may take action in accordance with the laws and regulations of that state.

D. A license issued by a party state is valid for practice in all other party states, unless clearly designated as valid only in the state that issued the license. When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states, the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

VA.R. Doc. No. R13-3559; Filed May 23, 2013, 1:26 p.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-355).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 17, 2013.

Effective Date: August 2, 2013.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific authority to control the sale and dispensing of prescription drugs is found in Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The goal of the amended regulation is to protect the safety and efficacy of drugs dispensed to patients from automated counting devices in a manner that is reasonable and the least burdensome to pharmacies that use such devices.

The amended regulation is less burdensome and less costly for pharmacies that utilize automated counting devices. Most such devices are used for fast-moving drugs, so the requirement to allow the bins to run dry every 60 days to prevent expired drugs from being dispensed is not necessary to protect public health and safety unless there is a risk of a drug that has been recalled remaining in a bin and being dispensed to patients. Some states do not allow multiple lots to be placed in one bin, but the majority of states have no such requirement and no run dry requirement.

In modifying 18VAC110-20-355, the board considered safeguards that would ensure recalled drugs are not being dispensed to patients. If the technology of the device can ensure drugs in a particular lot have been cleared out of the machine, it is not necessary to dispose of all drugs in a bin to which a recalled lot has been added. If a particular device does not have such technology, and if multiple lots are in a bin, the drugs may have to be removed and not used for patient care when there is a recall on any of the lots within the last three months. Additionally, the regulation requires regular emptying and cleaning of the device to avoid an accumulation of drug residue that might affect the efficacy of the drugs or the accuracy of the dispensing.

Rationale for Using Fast-Track Process: The board has opted to use the fast-track process for two reasons: the action is consistent with the Governor's project to reform regulations that are unnecessarily burdensome, and there was no objection voiced during the NOIRA comment period.

Substance: The public safety concern with the use of automated counting devices is that if there is a recall on a lot number among the drugs that have been placed in a bulk bin, can the recalled drugs be completely removed from the device. Therefore, the amended regulation specifies emptying the device and disposing of drugs if one of multiple lots has been placed in the bin or cell in the last three months and it is known that a recalled lot remains in the bin. Exceptions to the requirement for disposal are included if there is a reliable means of proving that the drugs included in the recall are no longer in the bin or if the bin has been allowed to run dry since the recalled lot was placed in the bin. The intent of the regulation is to protect the public without unnecessarily requiring drugs to be disposed of and wasted. Since the run dry requirement is eliminated, a provision requiring emptying and cleaning of the bins in accordance with manufacturers specifications is added to alleviate any concerns about drug residue affecting functionality and quality assurance.

Issues: The primary advantage of the regulatory action is cost and time savings to pharmacies that are currently required to run dry cells or bins in automated counting devices. The purposes for the requirement can be accomplished with a less burdensome and costly regulation that assures recalled lots of drugs do not remain in the cell for dispensing. There are no disadvantages to the public.

There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to eliminate the current requirement that bulk bins in an automated counting device be run dry every 60 days. In addition, the Board proposes to specify that: 1) only if there is a drug recall within the last three months or if it is known that a recalled drug is in the device will it be required that drugs be removed, and 2) if the device has technology that ensures a particular lot has been cleared or if the bin has been allowed to run dry since the addition of the recalled lot, it will not be necessary to remove all drugs in the bin in the event of a recall.

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

Estimated Economic Impact. Under the current regulations, if only one lot is added to a bin at one time, but a subsequent lot is added before the first has cleared, the bin is required to "run dry" where all product is completely removed prior to filling at least once every 60 days with a record made of the run dry dates. The Board proposes to repeal this mandate to have the pharmaceuticals completely removed prior to filling at least once every 60 days; but at the same the Board proposes to specify that:

> In the event of a drug recall involving one of multiple lots placed in a bin of an automated counting device in the last three months or if a recalled drug is known to remain in the bin, all drugs shall be removed from the bin and not used for patient care. The removal of drugs from the bin is not required if:
>
> a. The technology of the automated counting device can ensure drugs in a particular lot have been cleared; or
>
> b. The bin has been run dry, with a record made of the run dry date, since the addition of the recalled lot number in which all drugs were completely removed prior to filling with a subsequent lot number.

The proposal to eliminate the "run dry" requirement will result in cost savings both in staff time consumed with meeting the current 60-day run-dry requirement and in the unnecessary loss of drugs that are removed every 60 days when the bin must be "run dry." Public safety is maintained by no longer requiring the removal of pharmaceuticals when there is no clear benefit, but requiring removal when there is a risk of recalled drugs being present. Thus, the proposed amendments produce a net benefit.

Businesses and Entities Affected. The proposed amendments affect the 1,760 pharmacies in Virginia that have a current license (permit).

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments modestly reduce costs for pharmacies by eliminating the requirement that bulk bins in an automated counting device be "run dry" every 60 days.

Small Businesses: Costs and Other Effects. The proposal to eliminate the "run dry" requirement will result in cost savings for small businesses both in staff time consumed and in the unnecessary loss of drugs that are removed every 60 days when the bin must be run dry.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20, Regulations Governing the Pharmacy, relating to "run-dry" requirements for automated counting devices.

Summary:

> *The regulatory action eliminates the current requirement in 18VAC110-20-355 that bulk bins in an automated counting device be "run dry" every 60 days to prevent expired drugs from being dispensed. If a drug recall occurs within the last three months or if it is known that a recalled drug is in the device, the amended regulation requires that all drugs be removed from the bin and not*

used for patient care. If the device has technology that ensures a particular drug lot has been cleared or if the bin has been allowed to "run dry" since the addition of the recalled drug lot, it will not be necessary to remove all drugs from the bin in the event of a recall. A requirement for cleaning and maintaining the automated counting device is included in the amendments to the regulation.

18VAC110-20-355. Pharmacy repackaging of drug; records required; labeling requirements.

A. Pharmacies in which bulk reconstitution of injectable, bulk compounding or the repackaging or prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) used; strength, if any; date repackaged; quantity prepared; initials of the pharmacist verifying the process; the assigned lot or control number; the manufacturer's or distributor's name and lot or control number; and an expiration date.

B. The drug name; strength, if any; the assigned lot or control number or the manufacturer's or distributor's name and lot or control number; and an appropriate expiration date determined by the pharmacist in accordance with USP guidelines shall appear on any subsequently repackaged or reconstituted units.

C. Pharmacies using automated counting devices or dispensers in which drugs are removed from manufacturer's original packaging and placed in bulk bins shall comply with the following requirements:

1. A bin filling record shall be maintained, manually or in a computerized record for a period of one year from date of filling from which information can be readily retrieved, for each bin including:

a. The drug name and strength, if any;

b. The name of the manufacturer or distributor;

c. Manufacturer's control or lot number(s) and expiration date for all lots placed into the bin at the time of filling;

d. Any assigned lot number;

e. An expiration date determined according to USP guidelines for repackaging;

f. The date of filling; and

g. The pharmacist's initials verifying the accuracy of the process.

2. If more than one lot is added to a bin at the same time, the lot which expires first shall be used to determine the expiration date if shorter than a calculated date based on USP guidelines.

3. Each bin shall be labeled in such a manner as to cross-reference the information on the filling record with the correct expiration date.

4. If only one lot is added to a bin at one time, but a subsequent lot may be added before the first has cleared, the automated device shall be constructed to reasonably dispense the first lot before the second lot is dispensed~~,~~ and the expiration date on the bin's label shall reflect the expiration date assigned to the earlier lot~~, and the bin shall be allowed to "run dry" where all product is completely removed prior to filling at least once every 60 days with a record made of the run dry dates~~.

5. In the event of a drug recall involving one of multiple lots placed in a bin of an automated counting device in the last three months or if a recalled drug is known to remain in the bin, all drugs shall be removed from the bin and not used for patient care. The removal of drugs from the bin is not required if:

a. The technology of the automated counting device can ensure drugs in a particular lot have been cleared; or

b. The bin has been "run dry," with a record made of the "run dry" date, since the addition of the recalled lot number in which all drugs were completely removed prior to filling with a subsequent lot number.

6. An automated counting device shall be cleaned and maintained in accordance with recommended manufacturer guidelines and specifications.

D. A pharmacy may return a dispensed drug to stock for redispensing that has never left the pharmacy premises or the control of the pharmacy delivery agent pursuant to § 54.1-3411.1 A 3 of the Code of Virginia under the following conditions:

1. An expiration date shall be placed on the label prior to returning the drug to stock. In the absence of stability data to the contrary, the date on the label may not exceed the expiration date on the manufacturer's container or one year from the date the drug was originally dispensed and placed in the prescription vial, whichever date is earlier.

2. The restocked drug shall be used to fill the next prescription received for that product. In the event that the drug is not dispensed prior to the new assigned expiration date, it shall be removed from working stock as expired, and disposed of in accordance with 18VAC110-20-210.

3. If there is no lot number on the label of a drug returned to stock or on the prescription records that can be cross-referenced from the prescription label, the drug shall be removed from stock upon any recall of that drug product and returned to the manufacturer or otherwise disposed of in accordance with 18VAC110-20-210.

VA.R. Doc. No. R12-3083; Filed May 22, 2013, 2:08 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-20, 18VAC110-30-90, 18VAC110-30-100, 18VAC110-30-130).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 17, 2013.

Effective Date: August 2, 2013.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 527-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: The action is the result of a periodic review conducted pursuant to the Governor's Regulatory Reform Project. 18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances, is promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations in accordance with the Administrative Process Act.

The specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy, including the dispensing of controlled substances, is found in § 54.1-3307 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to reduce the requirements for the enclosure used by practitioners for the storage and selling of controlled substances. The amendments to the regulation eliminate requirements that are not necessary to protect the health of patients or safety of prescription medications. While security of patient records and of stock of drugs is essential, the amendments make reasonable allowances for access while the licensee is on duty or for emergency access by another licensed physician.

Rationale for Using Fast-Track Process: The board has opted to use the fast-track process for two reasons: the action is consistent with the Governor's project to reform regulations that are unnecessarily burdensome, and the board does not anticipate any objection to the amendments to the regulation.

Substance: The substantive changes are (i) reduction in the square footage for the selling and storage area from 60 to 40 square feet; (ii) allowance for maintenance of prescription records outside of the area if access is limited to authorized persons; (iii) elimination of specific height requirements for the enclosure; and (iv) security access to the area by other persons authorized to assist the practitioner while the practitioner is on duty.

Issues: The primary advantage of the regulatory action is less burdensome and costly regulation for practitioners who sell controlled substances to their patients. There are no disadvantages to the public. By reducing the square foot requirement for the selling and storage area, fewer requests for a limited use permit or a waiver from the 60-foot requirement will occur. There are no disadvantages to the Commonwealth.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a periodic review, the Board of Pharmacy (Board) proposes to amend its regulations for controlled substances sold by practitioners of the healing arts. Specifically, the Board proposes to add practitioners of osteopathic medicine and podiatry to the list in these regulations of those that are eligible to sell controlled substances, decrease the amount of space that licensed entities must allot for storage of controlled substances and eliminate other requirements for storage areas that the Board deems unnecessary.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. Current regulations specify that individuals who possess a current active license to practice medicine are eligible to be licensed to sell controlled substances. The Code of Virginia and other relevant regulations, however, also allow individuals licensed in osteopathic medicine and as podiatrists to be licensed to sell controlled substances. The Board now proposes to add these groups so that these regulations conform to the Code of Virginia and current practice. No entity is likely to incur costs on account of this regulatory change. Interested individuals will benefit from having a seeming contradiction between these regulations and the Code of Virginia fixed.

Current regulations require individuals licensed under these regulations to have an area or not less than 60 square feet. Currently, the Board can grant a waiver to this requirement but now proposes to change it so that licensees will just have to have 40 square feet to hold the prescription drugs that they are licensed to sell. This change will benefit licensees as they can choose to use the space that would otherwise be used to store drugs more efficiently and for some other purpose.

Current regulations also contain a list of other requirements that selling or storage area must conform to. The Board proposes to amend these provisions to eliminate any that do not contribute directly to the security of the storage/selling area. For instance the Board proposes to eliminate provisions that prescribe the type of doors that these enclosures must have but keep requirements that enclosures be locked and alarmed when the licensee is not on duty. No entity is likely to incur costs on account of these changes nor is the security of controlled substances likely to be affected. Licensed entities will likely benefit from additional flexibility to structure their storage areas in a more efficient manner that the proposed regulations will afford them.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that there are 591 licensed practitioners of the healing arts (physicians, individuals licensed in osteopathic medicine and podiatrists) who are

licensed to sell prescription drugs in the Commonwealth. All of these entities will be affected by these proposed regulations.

Localities Particularly Affected. No locality will be particularly affected by the proposed regulations.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to have any impact on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget for amendments to 18VAC110-30, relating to regulatory reform changes.

Summary:

The regulatory action amends requirements for the selling and storage area used by practitioners who sell controlled substances to their patients for consistency with amended regulations governing the practice of pharmacy and in response to the Governor's Regulatory Reform Initiative. The amendments (i) reduce in square footage the selling and storage area enclosure from 60 to 40 square feet; (ii) allow for maintenance of prescription records outside of the area if access is limited to authorized persons; (iii) eliminate the specific height requirements for the enclosure; and (iv) stipulate access to the area by other persons authorized to assist the practitioner while he is on duty.

Part II
Licensure Requirements

18VAC110-30-20. Application for licensure.

A. Prior to engaging in the sale of controlled substances, a practitioner shall make application on a form provided by the board and be issued a license.

B. In order to be eligible for a license to sell controlled substances, a practitioner shall possess a current, active license to practice medicine, osteopathic medicine, or podiatry issued by the Virginia Board of Medicine. Any disciplinary action taken by the Board of Medicine against the practitioner's license to practice ~~medicine~~ shall constitute grounds for the board to deny, restrict, or place terms on the license to sell.

C. For good cause shown, the board may issue a limited-use license, when the scope, degree or type of services provided to the patient is of a limited nature. The license to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:

1. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion must accompany the application. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice; and

2. The issuance and continuation of such license shall be subject to continuing compliance with the conditions set forth by the board.

18VAC110-30-90. Physical standards.

Physical standards for the controlled substance selling and storage area:

1. The building in which the controlled substances selling and storage area is located shall be constructed of permanent and secure materials. Trailers and other movable facilities shall not be permitted;

2. There shall be an enclosed area of not less than ~~60~~ 40 square feet that is designated as the controlled substances selling and storage area, which shall be used exclusively for ~~the~~ storage, preparation, and dispensing~~, and record keeping~~. Records related to the sale of controlled

substances may be maintained outside the selling and storage area with access limited to the licensee and those persons authorized to assist in the area. The work space used in preparation of the drugs shall be contained within the enclosed area. A controlled substance selling and storage area inspected and approved prior to November 3, 1993, shall not be required to meet the size requirement of this chapter;

3. Controlled substances maintained for ultimate sale shall be maintained separately from any other controlled substances maintained for other purposes. Controlled substances maintained for other purposes such as administration or samples may be stored within the selling and storage area provided they are clearly separated from the stock maintained for sale;

4. The selling and storage area, work counter space and equipment in the area shall be maintained in a clean and orderly manner;

5. A sink with hot and cold running water shall be available within the immediate vicinity of the selling and storage area; and

6. The entire area described in this chapter shall be well lighted and ventilated; the proper storage temperature shall be maintained to meet official specifications for controlled substance storage.

18VAC110-30-100. Access to selling area.

Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the licensee shall not be through the selling and storage area. The selling and storage area may be in an office that is exclusively used by the licensee and to which only the licensee has access, provided the portion of the office used exclusively for controlled substances storage and preparation is at least 60 40 square feet in area; provided the drugs are stored in a cabinet, closet, or other lockable area which that can be locked when the practitioner is using the office for purposes other than dispensing; and provided the office meets all other requirements of 18VAC110-30-90, 18VAC110-30-120, and 18VAC110-30-130.

18VAC110-30-130. Selling area enclosures.

A. The controlled substance selling and storage area of the licensee shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be construed constructed in such a manner that it protects the controlled substance stock from unauthorized entry and from pilferage at all times whether or not the licensee is on duty;

2. The enclosure shall be of sufficient height as to prevent anyone from reaching over to gain access to the controlled substances;

3. Entrances to the enclosed area must have a door which extends from the floor and which is at least as high as the adjacent counters or adjoining partitions; and

4. Doors to the area must have locking devices which will prevent entry in the absence of the licensee.

2. The enclosure shall be locked and alarmed at all times when the licensee is not on duty.

3. The enclosure shall be capable of being locked in a secure manner at any time the licensee on duty is not present in the storage and selling area.

B. The door keys or other means of entry and alarm access code to the selling and storage area shall be subject to the following requirements restricted to the licensee with the following exceptions:

1. Only the licensee shall be in possession of the alarm access code and any keys or other means of entry to the locking device on the door to such enclosure Other persons authorized to assist the licensee in the selling and storage area may possess a key or other means of entry into a locked area only when the licensee is on duty. Such key or other means of entry shall not allow entry when the licensee is not on duty; and

2. The selling and storage area must be locked when the licensee is not present and engaged in preparation or selling of drugs; and

3. 2. The licensee may place a key or other means of opening the locking device and the alarm access code in a sealed envelope or other sealed container with the licensee's signature across the seal in a safe or vault within the office or other secured place for use by another licensee for emergency access. In lieu of the licensee's signature across a seal, the executive director for the board may approve other methods of securing the emergency keys or access codes to the enclosed area.

C. The controlled substance selling and storage area is restricted to the licensee and one person designated by the licensee. The designated person may be present in the selling and storage area only during the hours when the licensee is on duty to render personal supervision.

VA.R. Doc. No. R13-3497; Filed May 22, 2013, 2:09 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers (amending 18VAC110-50-40, 18VAC110-50-70, 18VAC110-50-80).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 17, 2013.

Effective Date: August 2, 2013.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: The regulatory action is the result of a periodic review conducted pursuant to the Governor's regulatory reform project. 18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers, is promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations in accordance with the Administrative Process Act.

The specific statutory authority for the Board of Pharmacy to regulate the practice of pharmacy, including the dispensing of controlled substances, is found in § 54.1-3307 of the Code of Virginia.

Purpose: The purpose of the amended regulation is elimination of certain information currently required for an application for licensure as a wholesale distributor. Information about the responsible parties is necessary to ensure the integrity of a wholesale distributor business; the board is able to eliminate certain burdensome requirements without jeopardizing the enforceability of regulations or compromising the health and safety of persons who are the ultimate recipients of drugs being distributed for dispensing.

Rationale for Using Fast-Track Process: The board has opted to use the fast-track process for two reasons: the action is consistent with the Governor's project to reform regulations that are unnecessarily burdensome, and the board does not anticipate any objection to the amendments to the regulation.

Substance: The substantive changes are (i) modification of the required information on an application for licensure as a wholesale distributor and (ii) elimination of the requirement for a sworn statement regarding criminal convictions on the application.

Issues: The primary advantage of the regulatory action is less burdensome and costly regulation for an application for licensure as a wholesale distributor. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a periodic review, the Board of Pharmacy (Board) proposes to amend its regulations for wholesalers, manufacturers and warehousers. Specifically, the Board proposes to add clarifying language to the regulations, amend the requirements for information on a application to be licensed or registered and allow licensees to file an attestation disclosing any criminal history rather than requiring a sworn statement or affirmation.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. Currently, 18VAC110-50-40 A requires the holder of a license to restrict access to all areas in which prescription drugs are stored or kept for sale but does not specify which holders of what licenses are being referenced. Although this requirement is in the Virginia Administrative Code chapter that governs wholesale distributors, manufacturers and warehousers, and so the implication is that the requirement would apply to these licensees, the Board proposes to add these entities explicitly into the regulatory text so that it is clear who is required to restrict access to stored prescription drugs. No affected entity will incur any additional costs on account of this proposed change. To the extent that this change may forestall any misunderstanding of what is required of licensees, this proposed change will benefit all interested parties.

Current regulations require all partners in a covered partnership business to provide name, address, and social security number or control number on the application for licensure or registration and also require the name, address, social security number or control number and title of each corporate officer for businesses that are incorporated and applying for licensure or registration. Board staff reports that the Board does not believe it is reasonable to require social security or control numbers for all partners or all officers or directors of a corporation unless the individuals are directly involved in the operation of the distributorship. Consequently, the Board now proposes to amend the requirements for information so that only individuals who are specifically responsible for the operation of a facility will be required to provide identifying information to the Board. No entity is likely to be harmed by this regulatory change because the Board will still have information for the individual that they will hold responsible should there be an issue that the Board needs to address. Potential licensees or registrants will benefit from this change as it will make the process of filling out an application less time consuming and intrusive.

Current regulations require that the person who is named as the responsible party on the application for licensure provide a statement sworn or affirmed before a notary public that discloses any criminal convictions and any pending criminal charges. The named party also had to undergo a criminal background check. Since a notary public can only swear that the person signing the statement is who he says he is but cannot swear that the statement being signed is truthful, the Board proposes to change this requirement so that the named responsible party will just have to attest that they are being truthful. They will also still have to undergo a criminal background check so the information available to the Board before a license or registration is issued should not be adversely affected. Named responsible parties will likely benefit from this change as they will no longer have to take the time to go to a notary public and will also not have to incur the costs of any fee that the notary public might charge.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that there are 768 non-resident wholesaler distributors and 116 Virginia wholesale distributors that are licensed to do business in the Commonwealth. All of these entities will be affected by these proposed regulations.

Localities Particularly Affected. No locality will be particularly affected by the proposed regulations.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to have any impact on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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 adverse effect on small businesses, § 2.2-4007.04 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 Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget for amendments to 18VAC110-50 relating to regulatory reform changes.

Summary:

In response to the Governor's Regulatory Reform Initiative, the board's action will make the information required in the application process more reasonable and less restrictive. Specifically, the amendments (i) modify the required information on an application for licensure as a wholesale distributor and (ii) eliminate the requirement that the statement on criminal convictions be notarized.

18VAC110-50-40. Safeguards against diversion of drugs.

A. The holder of the license as a wholesale distributor or permit as a manufacturer or warehouser shall restrict all areas in which prescription drugs are stored or kept for sale to only those persons specifically designated as necessary for the manufacture, receipt, storage, distribution, or quality control of the controlled substance inventory, and shall provide reasonable security measures to include appropriate locking devices on all access doors to these areas and adequate lighting both inside and outside the facility to deter unauthorized entry and diversion.

B. The holder of the license or permit, except for those distributors of only medical gases other than nitrous oxide, shall install a device for the detection of breaking subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The installation shall be hardwired and both the installation and device shall be based on accepted burglar alarm industry standards.

3. The device shall be maintained in operating order and shall have an auxiliary source of power.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to the person named on the application as the responsible party or to persons specifically designated in writing in a policy and procedure manual.

6. The system shall be activated whenever the drug storage areas are closed for business.

C. Distribution or delivery of prescription drugs shall be accomplished in a manner to prevent diversion or possession of drugs by unauthorized persons.

1. The holder of the license or permit shall only deliver prescription drugs to a person authorized to possess such drugs at a location where the person is authorized to possess such drugs, and only at a time when someone authorized to possess such drugs is in attendance.

2. The holder of the license or permit shall affirmatively verify that the person to whom prescription drugs are delivered is authorized by law to receive such drugs.

3. Prescription drugs may be transferred to an authorized agent of a person who may lawfully possess prescription drugs, provided the transfer occurs on the premises of the wholesale distributor, manufacturer, or warehouser, and provided the identity and authorization of the agent is verified, and such transfer is only used to meet the immediate needs of a patient or patients.

18VAC110-50-70. Minimum required information.

A. The application form for a new license or for registration as a nonresident wholesale distributor or any change of ownership shall include at least the following information:

1. The name, full business address, and telephone number of the applicant or licensee and name and telephone number of a designated contact person;

2. All trade or business names used by the applicant or licensee;

3. The federal employer identification number of the applicant or licensee;

4. The type of ownership and name(s) of the owner of the entity, including:

a. If an individual, the name, address, social security number or control number;

b. If a partnership, the name, address, and social security number or control number of each partner who is specifically responsible for the operations of the facility, and the name of the partnership and federal employer identification number;

c. If a corporation:

(1) The name and address of the corporation, federal employer identification number, state of incorporation, the name and address of the resident agent of the corporation;

(2) The name, address, social security number or control number, and title of each corporate officer and director who is specifically responsible for the operations of the facility;

(3) For nonpublicly held corporations, the name and address of each shareholder that owns 10% or more of the outstanding stock of the corporation;

(4) The name, federal employer identification number, and state of incorporation of the parent company.

d. If a sole proprietorship, the full name, address, and social security number or control number of the sole proprietor and the name and federal employer identification number of the business entity;

e. If a limited liability company, the name and address of each member, the name and address of each manager, the name of the limited liability company and federal employer identification number, the name and address of the resident agent of the limited liability company, and the name of the state in which the limited liability company was organized;

5. Name, business address and telephone number, and social security number or control number, and documentation of required qualifications as stated in 18VAC110-50-80 of the person who will serve as the responsible party;

6. A list of all states in which the entity is licensed to purchase, possess and distribute prescription drugs, and into which it ships prescription drugs;

7. A list of all disciplinary actions imposed against the entity by state or federal regulatory bodies, including any such actions against the responsible party, principals, owners, directors, or officers over the last seven years;

8. A full description, for nonresident wholesale distributors, including the address, square footage, security and alarm system description, temperature and humidity control, and other relevant information of the facility or warehouse space used for prescription drug storage and distribution; and

9. An attestation providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts. Such attestation shall include the responsible party, principals, owners, directors, or officers.

B. An applicant or licensee shall notify the board of any changes to the information required in this section within 30 days of such change.

18VAC110-50-80. Minimum qualifications, eligibility, and responsible party.

A. The board shall use the following factors in determining the eligibility for licensure of wholesale distributors:

1. The existence of grounds to deny an application as set forth in § 54.1-3435.1 of the Code of Virginia;

2. The applicant's past experience in the manufacture or distribution of drugs or devices;

3. Compliance with the recordkeeping requirements;

4. Prior disciplinary action by a regulatory authority, prior criminal convictions, or ongoing investigations related to the manufacturing, distribution, prescribing, or dispensing of drugs by the responsible party or immediate family members of the responsible party, and owners, directors, or officers; and

5. The responsible party's credentials as set forth in subsection B of this section.

B. Requirements for the person named as the responsible party.

1. The responsible party shall be the primary contact person for the board as designated by the wholesale distributor, who shall be responsible for managing the wholesale distribution operations at that location;

2. The responsible party shall have a minimum of two years of verifiable experience in a pharmacy or wholesale distributor licensed in Virginia or another state where the person's responsibilities included, but were not limited to, managing or supervising the recordkeeping, storage, and shipment for drugs or devices;

3. A person may only serve as the responsible party for one wholesale distributor license at any one time;

4. The responsible party shall be employed full time in a managerial position and actively engaged in daily operations of the wholesale distributor;

5. The responsible party shall be present on a full-time basis at the location of the wholesale distributor during normal business hours, except for time periods when absent due to illness, family illness or death, vacation, or other authorized absence; and

6. The responsible party shall be aware of, and knowledgeable about, all policies and procedures pertaining to the operations of the wholesale distributor and all applicable state and federal laws related to wholesale distribution of prescription drugs.

C. The person named as the responsible party on the application shall submit the following with the application:

1. A passport size and quality photograph taken within 30 days of submission of the application;

2. A resume listing employment, occupations, or offices held for the past seven years including names, addresses, and telephone numbers of the places listed;

3. ~~A sworn statement or affirmation~~ An attestation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth;

4. A criminal history record check through the Central Criminal Records Exchange; and

5. A description of any involvement by the person with any business, including any investments, other than the ownership of stock in publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored drugs and devices and any lawsuits, regulatory actions, or criminal convictions related to drug laws or laws concerning wholesale distribution of prescription drugs in which such businesses were named as a party.

D. Responsibilities of the responsible party.

1. Ensuring that any employee engaged in operations is adequately trained in the requirements for the lawful and appropriate wholesale distribution of prescription drugs;

2. Requiring any employee who has access to prescription drugs to attest that he has not been convicted of any federal or state drug law or any law relating to the manufacture, distribution, or dispensing of prescription drugs;

3. Maintaining current working knowledge of requirements for wholesale distributors and assuring continued training for employees;

4. Maintaining proper security, storage and shipping conditions for all prescription drugs;

5. Maintaining all required records.

E. Each nonresident wholesale distributor shall designate a registered agent in Virginia for service of any notice or other legal document. Any nonresident wholesale distributor that does not so designate a registered agent shall be deemed to have designated the Secretary of the Commonwealth to be its true and lawful agent, upon who may be served all legal process in any action or proceeding against such nonresident wholesale distributor. A copy of any such service of legal documents shall be mailed to the nonresident wholesale distributor by the board by certified mail at the address of record.

VA.R. Doc. No. R13-3528; Filed May 22, 2013, 2:12 p.m.

BOARD OF PHYSICAL THERAPY

Final Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-50, 18VAC112-20-65, 18VAC112-20-70, 18VAC112-20-131, 18VAC112-20-135, 18VAC112-20-136, 18VAC112-20-140).**

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

Effective Date: July 17, 2013.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Summary:

The amendments (i) offer the option of meeting the standard of the Practice Review Tool in lieu of some training hours for applicants returning to practice through reinstatement, reactivation, or endorsement; (ii) reduce the traineeship hours for physical therapist assistants; (iii) allow part-time traineeships for graduates of nonapproved physical therapy schools; (iv) limit the numbers of supervisors for each trainee; (v) require co-signing of trainee documentation in patient records and identification of a trainee for the patient; (vi) eliminate the requirement that Type 1 continuing education training be face-to-face; and (vii) clarify that the coursework evaluation tool used to evaluate education in a nonaccredited physical therapy program should be based on the year of graduation.

In the reproposed regulation, the board had proposed adding the Federation of State Boards of Physical Therapy (FSBPT) to the list of continuing education providers; however, this change was removed as a result of public comment.

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.

Part I
General Provisions

18VAC112-20-10. Definitions.

In addition to the words and terms defined in § 54.1-3473 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in an episode of care that have been provided in an unbroken sequence in a single practice setting and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

~~"Face-to-face" means learning activities or courses obtained in a group setting or through interactive, real-time technology.~~

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"FSBPT" means the Federation of State Boards of Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"PRT" means the Practice Review Tool for competency assessment ~~given by the Federation of State Boards of Physical Therapy~~ developed and administered by FSBPT .

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

"Traineeship" means a period of active clinical practice during which an applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means ~~face-to-face~~ continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

18VAC112-20-50. Education requirements: graduates of schools not approved by an accrediting agency approved by the board.

A. An applicant for initial licensure as a physical therapist who is a graduate of a school not approved by an accrediting agency approved by the board shall submit the required application and fee and provide documentation of the physical therapist's certification by a report from the FCCPT or of the physical therapist eligibility for licensure as verified by a report from any other credentialing agency approved by the board that substantiates that the physical therapist has been evaluated in accordance with requirements of subsection B of this section.

B. The board shall only approve a credentialing agency that:

1. Utilizes the FSBPT Coursework Evaluation Tool for Foreign Educated Physical Therapists ~~of the Federation of State Boards of Physical Therapy~~, based on the year of graduation, and utilizes original source documents to establish substantial equivalency to an approved physical therapy program;

2. Conducts a review of any license or registration held by the physical therapist in any country or jurisdiction to ensure that the license or registration is current and unrestricted or was unrestricted at the time it expired or was lapsed; and

3. Verifies English language proficiency by passage of the TOEFL and TSE examination or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing or by review of evidence that the applicant's

physical therapy program was taught in English or that the native tongue of the applicant's nationality is English.

C. An applicant for licensure as a physical therapist assistant who is a graduate of a school not approved by the board shall submit with the required application and fee the following:

1. Proof of proficiency in the English language by passing TOEFL and TSE or the TOEFL iBT, the Internet-based tests of listening, reading, speaking, and writing by a score determined by the board or an equivalent examination approved by the board. TOEFL iBT or TOEFL and TSE may be waived upon evidence that the applicant's physical therapist assistant program was taught in English or that the native tongue of the applicant's nationality is English.

2. A copy of the original certificate or diploma that has been certified as a true copy of the original by a notary public, verifying his graduation from a physical therapy curriculum. If the certificate or diploma is not in the English language, submit either:

a. An English translation of such certificate or diploma by a qualified translator other than the applicant; or

b. An official certification in English from the school attesting to the applicant's attendance and graduation date.

3. Verification of the equivalency of the applicant's education to the educational requirements of an approved program for physical therapist assistants from a scholastic credentials service approved by the board.

D. An applicant for initial licensure as a physical therapist or a physical therapist assistant who is not a graduate of an approved program shall also submit verification of having successfully completed a ~~full-time~~ 1,000-hour traineeship within a two-year period under the direct supervision of a licensed physical therapist. The board may grant an extension beyond two years for circumstances beyond the control of the applicant, such as temporary disability or mandatory military service.

1. The traineeship shall be in accordance with requirements in 18VAC112-20-140.

2. The traineeship requirements of this part may be waived if the applicant for a license can verify, in writing, the successful completion of one year of clinical physical therapy practice as a licensed physical therapist or physical therapist assistant in the United States, its territories, the District of Columbia, or Canada, equivalent to the requirements of this chapter.

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;

2. The required application, fees, and credentials to the board;

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB);

4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another U.S. jurisdiction, or 60 hours obtained within the past four years; and

5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia.

For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.

C. A physical therapist ~~or physical therapist assistant~~ seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall ~~first successfully~~:

1. Successfully complete 480 hours in a traineeship in accordance with requirements in 18VAC112-20-140; or

2. Document ~~passage of~~ that he meets the standard of the PRT within the two years preceding application for licensure in Virginia and successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

D. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-70. Traineeship for unlicensed graduate scheduled to sit for the national examination.

A. Upon approval of the president of the board or his designee, an unlicensed graduate who is registered with the Federation of State Boards of Physical Therapy to sit for the national examination may be employed as a trainee under the direct supervision of a licensed physical therapist until the results of the national examination are received.

B. The traineeship, which shall be in accordance with requirements in 18VAC112-20-140, shall terminate two working days following receipt by the candidate of the licensure examination results.

C. The unlicensed graduate may reapply for a new traineeship while awaiting to take the next examination. A new traineeship shall not be approved for more than one year following the receipt of the first examination results.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of ~~15~~ 20 of the contact hours required for physical therapists and ~~10~~ 15 of the contact hours required for physical therapist assistants shall be in Type 1 ~~face-to-face~~ courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

a. The Virginia Physical Therapy Association;

b. The American Physical Therapy Association;

c. Local, state or federal government agencies;

d. Regionally accredited colleges and universities;

e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

f. The American Medical Association - Category I Continuing Medical Education course; [and]

g. The National Athletic Trainers Association [~~; and~~

~~h. The FSBPT~~].

2. No more than ~~15~~ 10 of the contact hours required for physical therapists and ~~20~~ 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he has taken the PRT may receive 10 hours of Type 1 credit for the biennium in which the assessment ~~examination~~ tool was taken. A physical therapist who can document that he has ~~passed~~ met the standard of the PRT may receive 20 hours of Type 1 credit for the biennium in which the assessment ~~examination was passed~~ tool was taken.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

I. Physical therapists holding certification to provide direct access without a referral shall include four contact hours as part of the required 30 contact hours of continuing education in courses related to clinical practice in a direct access setting.

18VAC112-20-135. Inactive license.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required renewal fee of $70 for a physical therapist and $35 for a physical therapist assistant, be issued an inactive license. The fee for the renewal of an inactive license due December

31, 2010, shall be $60 for a physical therapist and $30 for a physical therapist assistant.

1. The holder of an inactive license shall not be required to meet active practice requirements.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

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

2. Providing proof of~~: a. Active~~ active practice hours in another jurisdiction equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive.

a. If the inactive physical therapist licensee does not meet the requirement for active practice, the license may be reactivated by completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting ~~passage~~ that he has met the standard of the PRT within the two years preceding application for licensure in Virginia and successfully completing 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If the inactive physical therapist assistant licensee does not meet the requirement for active practice, the license may be reactivated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140; and

~~b. Completion of~~ 3. Completing the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

18VAC112-20-136. Reinstatement requirements.

A. A physical therapist or physical therapist assistant whose Virginia license is lapsed for two years or less may reinstate his license by payment of the renewal and late fees as set forth in 18VAC112-20-150 and completion of continued competency requirements as set forth in 18VAC112-20-131.

B. A physical therapist or physical therapist assistant whose Virginia license is lapsed for more than two years and who is seeking reinstatement shall:

1. Apply for reinstatement and pay the fee specified in 18VAC112-20-150; ~~Practice physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement or successfully complete 480 hours as specified in 18VAC112-20-140; and~~

2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years; and

3. Have actively practiced physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement.

a. If a physical therapist licensee does not meet the requirement for active practice, the license may be reinstated by completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting ~~passage~~ that he has met the standard of the PRT within the two years preceding application for licensure in Virginia and successfully completing 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If a physical therapist assistant licensee does not meet the requirement for active practice, the license may be reinstated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140.

18VAC112-20-140. Traineeship requirements.

A. The traineeship~~:~~ shall be (i) ~~shall be~~ in a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia, (ii) ~~is~~ approved by the board, and (iii) ~~is~~ under the direction and supervision of a licensed physical therapist.

B. Supervision and identification of trainees:

1. There shall be a limit of two physical therapists assigned to provide supervision for each trainee.

2. The supervising physical therapist shall countersign patient documentation (i.e., notes, records, charts) for services provided by a trainee.

3. The trainee shall wear identification designating them as a "physical therapist trainee" or a "physical therapist assistant trainee."

C. Completion of traineeship.

1. The physical therapist supervising the ~~inactive practice~~ trainee shall submit a report to the board at the end of the required number of hours on forms supplied by the board.

2. If the traineeship is not successfully completed at the end of the required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.

3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

VA.R. Doc. No. R09-1926; Filed May 22, 2013, 2:14 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-60. Standards and Regulations for Licensed Adult Day Care Centers (amending 22VAC40-60-90, 22VAC40-60-120; repealing 22VAC40-60-130).**

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

Effective Date: July 17, 2013.

Agency Contact: Annette Kelley, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7632, FAX (804) 726-7132, or email annette.kelley@dss.virginia.gov.

Summary:

The regulatory action brings 22VAC40-60, Standards and Regulations for Licensed Adult Day Care Centers, into conformity with changes made to §§ 63.2-1702 and 63.2-1707 of the Code of Virginia by Chapters 182 and 545 of the 2013 Acts of Assembly. Changes include removing requirements that (i) the licensee give evidence of financial responsibility; (ii) the licensee ensure sound financial management of the center; and (iii) the initial applicant provide to the department evidence of financial responsibility, including a projected budget for the first year of operation, complete balance sheet, and documentation of funds or credit available for the first 90 days of operation.

22VAC40-60-90. Requirements for licensee.

A. The licensee shall ensure compliance with all regulations for licensed adult day care centers and terms of the license issued by the department; with other relevant federal, state or local laws and regulations; and with the center's own policies.

B. The licensee shall meet the following requirements:

~~1. The licensee shall give evidence of financial responsibility~~.

~~2.~~ 1. The licensee shall be of good character and reputation.

~~3.~~ 2. The licensee shall protect the physical and mental well-being of the participants.

~~4.~~ 3. The licensee shall keep such records and make such reports as required by this chapter for licensed adult day care centers. Such records and reports may be inspected at any reasonable time in order to determine compliance with this chapter.

~~5.~~ 4. The licensee shall meet the qualifications of the administrator if he assumes those duties.

22VAC40-60-120. Operational responsibilities.

The licensee shall be responsible for the overall planning of the program and services to be provided by the center. The operational responsibilities of the licensee shall include, but not be limited to, the following:

1. To develop a written statement of the purpose and scope of the services to be provided by the center, a description of adults who may be accepted into the program as well as those whom the program cannot serve, and written policies under which the center will operate;

NOTE: This requirement applies only to initial application for licensure unless there is a significant change.

2. To ensure that the center's activities, services, and facilities are maintained in compliance with this chapter, with the terms of the current license issued by the department and with other relevant federal, state, or local laws and regulations;

3. To appoint and identify in writing a director to be responsible for the day-to-day operation and management of the center, except when the sponsor is an individual who serves as the director or a partnership in which a partner serves as the director;

4. To provide for an adequate number of qualified staff capable of carrying out the operation of the program;

5. To develop a written organizational chart indicating lines of authority and a staffing plan which includes a staffing schedule; and

6. To establish sound policies under which the center shall operate~~; and~~.

~~7. To ensure sound financial management of the center.~~

22VAC40-60-130. ~~Financial responsibilities.~~ (Repealed.)

~~With an initial application for licensure, the applicant shall provide the department with the following evidence of financial responsibility:~~

~~1. A projected budget detailing income and expenses of the proposed center for the first year of operation;~~

~~2. A complete balance sheet showing separately the current assets committed to and current liabilities charged against the proposed center; and~~

~~3. Documentation of funds or credit available for the first 90 days of operation.~~

~~NOTE: Financial records may be requested pursuant to § 63.2-1706 of the Code of Virginia.~~

VA.R. Doc. No. R13-3659; Filed May 17, 2013, 11:19 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-72. Standards for Licensed Assisted Living Facilities (amending 22VAC40-72-50).**

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

Effective Date: July 17, 2013.

Agency Contact: Judith McGreal, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7157, or email judith.mcgreal@dss.virginia.gov.

Summary:

The regulatory action brings 22VAC40-72, Standards for Licensed Assisted Living Facilities, into conformity with changes made to §§ 63.2-1702 and 63.2-1707 of the Code of Virginia by Chapters 182 and 545 of the 2013 Acts of Assembly. Specifically, the changes remove requirements from 22VAC40-72-50 (Licensee) that the licensee (i) shall give evidence of financial responsibility and (ii) develop and maintain an operating budget sufficient to ensure adequate funds for all aspects of operation.

Part II
Administration and Administrative Services

22VAC40-72-50. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with relevant federal, state or local laws and other relevant regulations; and with the facility's own policies and procedures.

B. The licensee shall meet the following requirements:

~~1. The licensee shall give evidence of financial responsibility.~~

~~2.~~ 1. The licensee shall be of good character and reputation.

Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

~~3.~~ 2. The licensee shall meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

~~4.~~ 3. The licensee shall protect the physical and mental well-being of residents.

~~5.~~ 4. The licensee shall exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, these regulations, and the welfare of the residents.

~~6. The licensee shall develop and maintain an operating budget, including resident care, dietary, and physical plant maintenance allocations and expenditures. The budget shall be sufficient to ensure adequate funds in all aspects of operation.~~

~~7.~~ 5. The licensee shall ensure that the facility keeps such records, makes such reports and maintains such plans, schedules, and other information as required by this chapter for licensed assisted living facilities. The facility shall submit, or make available, to the department's representative, records, reports, plans, schedules, and other information necessary to establish compliance with this chapter and applicable law. Such records, reports, plans, schedules, and other information shall be maintained at the facility and may be inspected at any reasonable time by the department's representative.

~~8.~~ 6. The licensee shall meet the qualifications of and requirements for the administrator if he serves as the administrator of the facility.

C. An assisted living facility sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

D. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner or his designated agents. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the department.

2. The commissioner may at his discretion also approve for licensure applicants who meet requisite experience criteria as established by the board.

3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.

4. The commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

E. If there are plans for a facility to be voluntarily closed or sold, the licensee shall notify the regional licensing office of

intent to close or sell the facility no less than 60 days prior to the closure or sale date. The following shall apply:

1. No less than 60 days prior to the planned closure or sale date, the licensee shall notify the residents, legal representatives, and designated contact persons of the intended closure or sale of the facility and the date for such, and the requirements of 22VAC40-72-420 shall apply.

2. If the facility is to be sold, at the time of notification of residents of such, the licensee shall explain to each resident, legal representative, and at least one designated contact person that unless provided otherwise by the new licensee, the resident has a choice as to whether to stay or to relocate and that if a resident chooses to stay, there must be a new agreement/acknowledgment between the resident and the new licensee that meets the specifications of 22VAC40-72-390.

3. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

EXCEPTION: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, and designated contact persons as soon as the intent to close or sell the facility is known.

VA.R. Doc. No. R13-3660; Filed May 17, 2013, 11:19 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-80. General Procedures and Information for Licensure (amending 22VAC40-80-20, 22VAC40-80-160).**

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

Effective Date: July 17, 2013.

Agency Contact: Jan Sigler, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7901, FAX (804) 726-7132, or email jan.sigler@dss.virginia.gov.

Summary:

The regulatory action brings 22VAC40-80, General Procedures and Information for Licensure, into conformity with changes made to §§ 63.2-1702 and 63.2-1707 of the Code of Virginia by Chapters 182 and 545 of the 2013 Acts of Assembly.

The amendments provide that upon receipt of an initial application, the department will investigate the financial responsibility of an applicant for licensure and that upon receipt of a new application, the Commissioner of the Department of Social Services shall (i) investigate the activities, services, and facilities of the applicant and his character and reputation; (ii) if the applicant is an association, partnership, limited liability company, or corporation, investigate the character and reputation of its officers and agents; and (iii) upon receipt of an initial application, investigate the applicant's financial responsibility. The amendments also provide that records containing confidential proprietary information furnished to the department shall be exempt from disclosure and that at the time of the initial inspection, the financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference. An exception pertaining to inspection of financial records of child welfare agencies is removed because the new language regarding inspection of financial records will also apply to child welfare agencies.

22VAC40-80-20. Preplanning.

A. Licensing staff are available throughout the application or licensing process to answer questions and provide consultation and technical assistance (see 22VAC40-80-130).

B. In order to avoid costly errors, applicants and prospective applicants are urged to present their building plans to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations (see 22VAC40-80-150).

C. ~~In addition to making~~ The department will make an on-site inspection of the proposed facility and ~~the proposed~~ services~~, the department will~~; investigate the ~~financial responsibility of the licensee and will investigate the~~ character and reputation of the licensee and, if required, staff and household members; and upon receipt of the initial application will investigate the financial responsibility of the applicant (see 22VAC40-80-160).

22VAC40-80-160. ~~The investigation~~ Investigation.

A. Upon receipt of the application the commissioner shall:

1. Cause an investigation to be made of the activities, services, and facilities of the applicant, and of his character and reputation;

2. If the applicant is an association, partnership, limited liability company, or corporation, cause an investigation of the character and reputation of its officers and agents; and

3. Upon receipt of the initial application, cause an investigation of the applicant's financial responsibility.

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

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

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

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

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

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

NOTE: See 22VAC40-90, 22VAC40-190, or 22VAC15-50, as applicable.

~~C.~~ D. The applicant or licensee shall at all times afford the department's representative reasonable opportunity to inspect all of the facility's or agency's buildings, books, and records. Records that contain confidential proprietary information furnished to the department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.

~~EXCEPTION: Section 63.2-1702 of the Code of Virginia provides for an exception in regard to inspection of financial records of child welfare agencies under specified conditions.~~ At the time of the initial application, the financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference.

~~D.~~ E. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision. Interviews with residents, participants, and any person under the facility's or agency's custody, control, direction, or supervision shall be:

1. Authorized by the person to be interviewed or his legally authorized representative; and

2. Limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations for licensure of the facility or agency.

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

~~F.~~ G. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard that creates a special hardship. (See Part V (22VAC40-80-230 et seq.) of this chapter Allowable Variances.)

VA.R. Doc. No. R13-3658; Filed May 17, 2013, 11:20 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-111. Standards for Licensed Family Day Homes (amending 22VAC40-111-30).**

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

Effective Date: July 17, 2013.

Agency Contact: Becky Sagle, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7037, FAX (804) 726-7132, or email becky.sagle@dss.virginia.gov.

Summary:

Pursuant to Chapters 182 and 545 of the 2013 Acts of Assembly, the requirement for a licensee to provide evidence of financial responsibility is deleted.

22VAC40-111-30. Operational responsibilities.

A. The provider shall ensure compliance with these standards and the terms of the current license issued by the department and with relevant federal, state or local laws, and other relevant regulations.

B. The provider will ensure compliance with the home's policies that have been disclosed to the parents as required by 22VAC-40-111-70.

~~C. The provider shall give evidence of financial responsibility.~~

~~D.~~ C. The provider shall be of good character and reputation. Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

~~E.~~ D. The provider shall meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

~~F.~~ E. The provider shall ensure that the home's activities, services, and facilities are conducive to the welfare of children in care.

~~G.~~ F. The provider shall be responsible for the home's day-to-day operation.

~~H.~~ G. The provider shall ensure that any advertising is not misleading or deceptive as required by § 63.2-1713 of the Code of Virginia.

~~I.~~ H. The provider shall meet the requirements specified in 22VAC40-80, General Procedures and Information for Licensure.

VA.R. Doc. No. R13-3661; Filed May 17, 2013, 1:07 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-120. Minimum Standards for Licensed Family Day-Care Systems (amending 22VAC40-120-10, 22VAC40-120-20).**

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

Effective Date: July 17, 2013.

Agency Contact: Karen Cullen, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, or email karen.cullen@dss.virgnia.gov.

Summary:

Pursuant to Chapters 182 and 545 of the 2013 Acts of Assembly, this regulatory action (i) clarifies that upon receipt of the initial application, the department's representative will investigate the financial responsibility of the applicant; (ii) clarifies that the financial records of an initial applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference; and (iii) removes the provisions allowing the department to request an audit of the family day system financial records, specifying budget and balance sheet requirements for initial applicants, and evidence required to show financial responsibility. The amendments also update citations to the Code of Virginia and make other changes to conform the regulation to the style and format of the Virginia Administrative Code.

22VAC40-120-10. Introduction.

A. Legal Base. Chapter ~~10~~ 17 (§ ~~63.1-195 et seq.)~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia sets forth the responsibility of the Department of Social Services for licensure of family day-care systems, including the authority and responsibility of the State Board of Social Services for the development of regulations containing minimum standards and requirements.

It is a misdemeanor to operate a family day-care system without a license. (§ ~~63.1-215~~ 63.2-1712 of the Code of Virginia)

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

~~"Family Day-Care System" means any person who approves family day-care homes as members of its system; who refers children to available day-care homes in that system; and who through contractual arrangement may provide central administrative functions including, but not limited to, training of operators of family day-care homes; technical assistance and consultation to operators of family day-care homes; inspection, supervision, monitoring, and evaluation of family day-care homes; and referral of children to available health and social services. (§ 63.1-195 of the Code of Virginia.)~~

~~"Family Day-Care System Home" means any private family home, which is an approved member of a family day-care system and receives nine or fewer children for care, protection and guidance during any part of the 24-hour day except children who are related by blood or marriage to the person who maintains the home. (Family day-care homes that are members of a licensed day-care system and are approved by that system to care for six or more children are not subject to direct licensure by the department.) by law; see § 63.1-196.001B of the Code of Virginia.~~

"Abused or ~~Neglected Child"~~ neglected child" ~~(See~~ (see § ~~63.1-248.2)~~ 63.2-100 of the Code of Virginia) means any child ~~less~~ younger than 18 years of age whose parents or other persons responsible for his or her care:

a. Create or inflict, threaten to create or inflict, or allow to be ~~create~~ created or inflicted a physical or mental injury by other than accidental means, or ~~creates~~ create a substantial risk of death, disfigurement, or impairment of bodily or mental functions;

b. Neglect or refuse to provide care necessary for the child's health, unless the child is, in good faith, under treatment solely by spiritual means through prayer, according to the practice of a recognized church or denomination;

c. Abandon the child;

d. Commit or allow to be committed any sexual act upon a child in violation of the law.

"Child" means any person ~~less~~ younger than 18 years of age.

"Commissioner" means the Commissioner of Social Services also known as the Director of the Virginia Department of Social Services. (§ ~~63.1-2~~ 63.2-100 of the Code of Virginia)

"Complaint" means an accusation received either orally or in writing that:

a. A licensed family day-care system is not in compliance with one or more of these standards or one or more statutory requirements; or

b. A family day-care system home is not in compliance with one or more applicable requirements of these standards or one or more requirements as established by the family day-care system; or

c. A child or children in the care of a family day-care home, which is a member of a licensed family day-care system is or are being abused or neglected.

~~"Day-Care"~~ "Day-care" means care, protection, and guidance provided to a child or group of children separated from their parents or guardian for less than 24 hours per day at a location other than the home of the parents or guardian.

~~"Day-Care Provider"~~ "Day-care provider" means an individual who, by contract with a family day-care system, provides day-care in his or her home.

"Department" means the Virginia Department of Social Services.

"Department ~~Representative"~~ representative" means an employee of the ~~Virginia Department of Social Services~~ department, acting as the authorized agent of the ~~Commissioner~~ commissioner in carrying out the responsibilities and duties specified in Chapter ~~10~~ 17 (§ ~~63.1-195~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia.

"Director" means the licensee or a person designated by the licensee who oversees the day-to-day operation of the system, including compliance with all minimum standards for licensed family day-care systems.

"Family day-care system" means any person who approves family day-care homes as members of its system; who refers children to available day-care homes in that system; and who through contractual arrangement may provide central administrative functions, including, but not limited to, training of operators of family day-care homes; technical assistance and consultation to operators of family day-care homes; inspection, supervision, monitoring, and evaluation of family day-care homes; and referral of children to available health and social services. (§ 63.2-100 of the Code of Virginia)

"Family day-care system home" means any private family home, which is an approved member of a family day-care system and receives nine or fewer children for care, protection, and guidance during any part of the 24-hour day except children who are related by blood or marriage to the person who maintains the home. Family day-care homes that are members of a licensed day-care system and are approved by that system to care for six or more children are not subject to direct licensure by the department. (§ 63.2-100 of the Code of Virginia)

"Licensee" means any person, association, partnership, or corporation to whom the license is issued.

"Person" means any natural person or any association, partnership, or corporation. For the purpose of these standards public agencies are not included in this definition.

"Referral" means any activity by the family day-care system ~~which~~ that provides assistance in locating or arranging day-care for children in homes that have been accepted or approved as members of the system, or in locating or arranging for health or social services from other sources based upon identified needs.

"Sponsor" means an individual, association, partnership, or corporation having the responsibility for planning and operating a family day-care system subject to licensure. The licensee is the sponsor of a family day-care system. (The sponsor may not, in all cases, be the owner of the physical plant including buildings or real estate, or both, in or on which the family day-care system office is located. In these instances the term "sponsor" as defined here and used in this chapter is considered to be the person, partnership, association, or corporation that owns the enterprise rather than the physical plant or real estate, or ~~both,.)~~ both.)

C. The license.

1. A license to operate a family day-care system is issued to a specific person, partnership, association, or corporation for an exact location, which will be indicated on the license.

2. The family day-care system shall be operated and conducted in the name of the sponsor or in such name as shall be designated on the application and as indicated on the license.

3. The license expires automatically and is not transferable when there is a change of sponsorship.

~~4. [Deleted effective February 1, 1984.]~~

~~5.~~ 4. The current license shall be posted at all times at a place that is conspicuous to the public in the building housing the system office. If the system has more than one office, copies of the current license shall be posted in a place that is conspicuous to the public in each office.

~~6.~~ 5. An annual license is one issued to a family day-care system when the activities, services, and facilities meet substantially the minimum standards and requirements for a license that are set forth in this chapter and any additional requirements that may be specified in Chapter ~~10~~ 17 (§ ~~63.1-195~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the

Code of Virginia. The annual license is effective for 12 months unless it is sooner revoked or surrendered.

~~7.~~ 6. When an annual license expires, a provisional license may be issued for any period not to exceed six months~~,~~ if the applicant is temporarily unable to comply with all of the requirements; however, no facility may operate under any such provisional license and renewals of that license for a longer period than six successive months.

~~8.~~ 7. At the discretion of the ~~Commissioner~~ commissioner, a conditional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements. A conditional license and any ~~renewable~~ renewal of that shall be for no longer a period than six successive months.

~~9.~~ 8. Terms of the license.

a. The terms of any license issued include:

(1) The operating name of the family day-care system;

(2) The name of the individual, the partnership, the association, or the corporation to whom the license is issued;

(3) The physical location;

(4) The number of homes that may be under contract to the system;

(5) The period of time for which the license is effective; and

(6) The total number of children who may be referred by the system and be receiving care at any given time in all homes that are members of the system.

b. The terms of the license may include other limitations ~~which~~ that the ~~Commissioner~~ commissioner may prescribe within the context of this chapter.

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

D. The licensing process.

1. Pre-application consultation. Upon request, the department's representative will provide consultation to any person seeking information about obtaining a license for a family day-care system. The purpose of such consultation is:

a. To explain standards;

b. To help the potential applicant to explore the operational demands of a licensed family day-care system;

c. To provide assistance in locating sources of information and technical assistance;

d. To alert the potential applicant of the need to determine whether local ordinances will affect the proposed operation (e.g. zoning, business license, etc.)~~;~~

e. To provide an on-site visit to a proposed family day-care system office, upon request.

2. The application.

a. The application for a license to operate a family day-care system shall be obtained ~~form~~ from the ~~Virginia Department of Social Services~~ department.

b. The application, together with all required information, shall be submitted to the ~~Department~~ department at least two months in advance of the planned opening date.

This is required in order that a determination of compliance with the provisions of Chapter ~~10~~ 17 (§ ~~63.1-195~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia~~,~~ and with the Standards for Licensed Family Day-Care Systems as set forth ~~here~~ in this chapter may be made.

Among other things, the information submitted shall be sufficient to enable the department's representative to determine, during the subsequent investigation, the specific services to be offered, the adequacy of staff to provide these services, the financial capability of the applicant, the character and reputation of the applicant, including the officers and agents of any association, partnership~~,~~ or corporation as mandated by § ~~63.1-198~~ 63.2-1702 of the Code of Virginia.

c. The application shall be signed by the individual responsible for the operation of the family day-care system. The application for a family day-care system to be operated by a board shall be signed by an officer of the board, preferably the chairman.

3. The investigation.

a. Following receipt of the application, the department's representative will make an on-site inspection of the proposed office and an investigation of the proposed services, as well as an investigation of the character~~,~~ and reputation ~~and financial responsibility~~ of the applicant~~.~~~~,~~ and, upon receipt of the initial application, an investigation of the applicant's financial responsibility.

b. ~~"The applicant~~ Applicants for licensure and licensees shall at all times afford ~~representatives of~~ the commissioner ~~required to make the investigation~~ reasonable opportunity to inspect all of ~~the applicant's~~ their facilities, books~~,~~ and records, and to interview ~~his or its~~ their agents and employees and any ~~child or other~~ person living or participating in such facilities, ~~within his or its~~ or under their custody~~,~~ ~~or~~ control~~,~~ direction, or supervision.~~"~~ (§ ~~63.1-198~~ 63.2-1706 of the Code of Virginia) The financial records of an initial applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference.

4. Notice to the applicant of commissioner's action. Upon completion of the investigation of the application for a license, the applicant will be notified in writing of the commissioner's decision.

If the license is issued, an accompanying letter will cite any areas of ~~non-compliance~~ noncompliance with

standards. This letter will also include any limitations on the license and may contain recommendations.

If a license is to be denied, the letter will state the reasons for the intent to deny and will set forth the applicant's right to an administrative hearing.

5. Procedures for renewal of annual, provisional, or conditional license. In order to renew an annual, provisional, or conditional license, the licensee must complete the renewal application and return it, together with any required attachments, to the department. In order to assure timely processing, the renewal application should be completed and returned within 10 days after it is received from the department.

The procedure for investigation and issuance or denial of the license as set forth in subdivisions ~~D~~ 3 and ~~D~~ 4 of this subsection will be followed.

6. Early compliance (replacement of a provisional or conditional license with an annual license).

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

(1) The facility complies with all standards listed on the face of the provisional or conditional license well in advance of the expiration date of the provisional or conditional license, and no additional areas of ~~non-compliance~~ noncompliance exist;

(2) Compliance has been verified by an on-site observation by the department representative or by written evidence provided by the licensee; and

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

b. A request to void a provisional or conditional license and to issue an annual license must be made in writing by the licensee to the regional office of the ~~Virginia Department of Social Services~~ department from which the family day-care system's license to operate was issued.

c. If the request is approved by the department, the effective date of the new annual license will be the same as the beginning date of the provisional or conditional license.

7. Situation requiring a new application. A new application must be filed when sponsorship of the family day-care system changes.

8. Modification.

a. The conditions of the license may be modified during the effective dates of the license with respect to increasing or decreasing the number of homes that may be placed under contract, the number of children who may be referred by the system and be receiving care at a given time, changing the name of the system when there is no change in sponsorship, ~~change in~~ changing location of the system office, or ~~because of~~ other conditions caused by changes in staff, program, or facilities.

b. The licensee shall report to the department any contemplated changes in operation ~~which~~ that would affect ~~with~~ either the terms of the license or the continuing eligibility for a license. (This does not mean the department has to approve changes in staff or program unless they affect the terms of the license or continuing eligibility.)

c. This information shall be submitted in writing by the licensee to the regional office of the ~~Virginia Department of Social Services~~ department from which the system's license to operate was issued.

d. The department will then determine whether such changes may be approved and the license modified accordingly or whether a new application must be filed.

9. Determination of continued compliance. In order to determine continued compliance with standards during the effective dates of the license, the department's representative will make announced and unannounced visits to the ~~offices~~ office or offices of the system and may make such visits to homes that are members of the system.

10. Complaint investigation.

a. The department has the responsibility to investigate any complaints regarding alleged violations of minimum standards for licensed family day-care systems and provisions of Chapter ~~10~~ 17 (§ ~~63.1-195~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia~~, or both~~.

b. The licensee has the responsibility to investigate any complaints regarding any family day-care home ~~which~~ that is approved as a member of its system. (See 22VAC40-120-50 C.) At its discretion the department may also investigate complaints against individual homes.

11. Revocation. Any license may be revoked for failure to maintain these standards or for violation of the provisions of Chapter ~~10~~ 17 (§ ~~63.1-195~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia.

12. Appeals. The applicant or licensee has the right to request an administrative hearing regarding any denial or revocation of a license, in accordance with the provisions of the Administrative Process Act~~, Chapter 1.1:1 (§§ 9-6.14:11 through 9-6.14:14) of Title 9~~ (§ 2.2-4000 et seq. of the Code of ~~Virginia~~ Virginia).

Following the receipt of the final order ~~which~~ that transmits the department's decision after the administrative hearing, the applicant/licensee has the right to appeal to a court of record in accordance with § ~~63.1-213~~ 63.2-1710 of the Code of Virginia.

22VAC40-120-20. Organization and ~~Administration~~ administration.

A. Sponsorship.

1. A family day-care system may be sponsored by a single individual, a partnership, an association, or a corporation.

2. A corporation sponsoring a family day-care system shall maintain its ~~corporation sponsoring a family day-care system shall maintain its~~ corporate status in accordance with Virginia law.

3. Such corporation shall be organized and empowered for the purpose of operating and maintaining a family day-care system. Corporations not organized and empowered solely to operate a family day-care system shall provide for such operations in their charters.

4. A family day-care system sponsored by an association or corporation shall be controlled by a governing board that shall fulfill the duties of the licensee.

5. If a family day-care system is sponsored by an individual or a partnership, the individual or partnership shall be the licensee and shall comply with the responsibilities specified for the governing board. (See subdivision B 3 of this section.)

B. Governing board.

1. Composition of the ~~Governing Board~~ governing board.

a. The membership of the governing board shall be based on the size and purpose of the family day-care system as well as the services to be offered by the system.

b. It shall be large enough and of a composition to:

(1) Be representative of the variety of interests served by the system;

(2) Contain experience appropriate to the services offered by the system; and

(3) Be representative of the geographical area served by the system.

c. At minimum, the governing board shall be composed of three members, unless there are fewer than three shareholders~~,~~ at which time the number of members can equal the number of shareholders. This membership shall include a president, secretary-treasurer, and member-at-large. When there are fewer than three members, this membership shall consist of a president and secretary-treasurer.

d. The method of selecting board members shall be made known to the department's representative and shall be consistent with the ~~by-laws~~ bylaws.

2. Meetings of the governing board.

a. The governing board shall meet not less often than quarterly.

b. Minutes of all meetings shall be recorded and retained in a permanent file at the office of the family day-care system.

c. Copies of minutes shall be made available to the department's representative upon request.

3. The responsibilities of the governing board shall include, but shall not be limited to:

a. Establishing written ~~by-laws~~ bylaws for the association or corporation~~;~~ (not applicable to an individual or partnership)~~;~~.

b. Establishing written goals and policies under which the family day-care system is to operate ~~(See~~ (see subsection C of this section)~~;~~.

c. Ensuring the family day-care system functions according to its defined purpose and within the scope of services to be offered~~;~~.

d. Ensuring ~~that~~ compliance with minimum standards for licensed family day-care systems~~;~~.

e. Maintaining a budgetary and financial system ~~which~~ that assures ~~that~~ a sound financial structure is maintained~~;~~.

f. Appointing a qualified director to whom it delegates, in writing, the authority and responsibility for administrative direction and management of the family day-care system in accordance with established policies (optional for an individual or partnership)~~;~~.

g. Establishing written policies ~~which~~ that govern the board's or licensee's relationship to the director to include, at minimum:

(1) Evaluation of the performance of the director not less often than annually;

(2) Provision for the director to meet with the board periodically to review the services being provided and the personnel needs and the fiscal management of the family day-care system.

h. Providing a written organizational chart ~~which~~ that indicates the organizational elements of the system, the personnel positions within each organizational element, and the lines of authority and communication within the family day-care system. This chart shall be kept current.

i. Reviewing, at least annually, the program of the family day-care system. This review shall include an examination of:

(1) The number, size, and capabilities of homes, and quality of service offered by homes that are members of the system;

(2) The needs of homes that are members of the system and the services offered to these homes by the system;

(3) The needs of children and families served by the system and the services offered to them;

(4) Problems encountered ~~n~~ in the operation of the system;

(5) Consistency of services provided within the framework of the stated purpose and objectives of the system;

(6) Changes required in the focus of the system's program;

(7) The adequacy of the ~~record-keeping~~ recordkeeping system.

j. Determining, based on the annual review required by subdivision ~~B~~ 3 i of this ~~section~~ subsection, the following:

(1) Requirements for additional staff training;

(2) Requirements for changes in staffing;

(3) Requirements for changes in the focus of the program and services offered by the system.

k. Developing and implementing plans to respond to the needs identified in subdivision ~~B~~ 3 j of this ~~section~~ subsection.

l. Maintaining accurate and appropriate inventories regarding all real property and equipment belonging to the system.

m. Ensuring that member homes comply with local child care ordinances where such ordinances exist. (NOTE: A note of approval from the administrator of the local ordinances will constitute evidence of compliance.)

C. Goals, policies, and procedures.

1. Goals.

a. Written goals shall be developed for the family day-care system.

b. These goals shall clearly describe the philosophy and objectives of the system.

c. At minimum, they shall address:

(1) The purpose of the family day-care system;

(2) The population to be served;

(3) The recruitment of homes;

(4) The program to be offered by the system in terms of:

(a) Services to be provided to the homes that are members of the system;

(b) Services to be provided to families and children who use the system.

2. Policies and procedures. Written policies and procedures shall be prepared for the operation of the family day-care system. These policies and procedures shall relate to:

a. Personnel policies. ~~(see~~ (See 22VAC40-120-30 ~~B)~~ B.)

b. Services to member homes including:

(1) Criteria for approving family day-care homes as members of system~~.~~:

(2) Training of home operators;

(3) Technical assistance and consultation to home operators; and

(4) Inspection, supervision, monitoring and evaluation of system homes.

c. Services to children and their families including:

(1) Referral of children to homes that are members of the system; and

(2) Referral of children to available health and social services.

3. A copy of the goals and all policies and procedures shall be made available to the department representative upon request.

D. Finances.

1. Fiscal accountability. ~~a.~~ The family day-care system shall have a plan of financing ~~which~~ that assures sufficient funds to operate in accordance with its stated purpose, objectives, and the services to be provided.

~~b. The department, at any time, may request an audit of the financial records of the system by a certified public accountant. When requested, systems shall obtain such an audit and the cost of the audit report shall be borne by the system. (This does not mean that the department will routinely require such a report as part of the process of application for licensure.)~~

~~c. A new system shall as part of its initial application for licensure:~~

~~(1) Submit a plan of financing (working budget) for the first year of operation;~~

~~(2) Document funds or credit available for the first year of operation;~~

~~(3) Provide a financial report reflecting the current fiscal condition of the facility. This report shall be in the form of a current balance sheet showing a statement of assets and liabilities;~~

~~(4) Submit fee and payment schedules as required by subdivision D 3 of this section.~~

~~d. The application for license renewal shall include evidence of financial responsibility. At minimum, this evidence shall consist of:~~

~~(1) A current balance sheet showing a statement of current assets and current liabilities;~~

~~(2) A budget for the next year of operation;~~

~~(3) A copy of the current audit report required by subdivision D 1 b of this section if such a report is requested by the department;~~

~~(4) Current fee and payment schedules as required by subdivision D 3 of this section.~~

2. Internal financial procedures.

a. There shall be a system of financial ~~record keeping~~ recordkeeping that is consistent with generally accepted accounting principles, showing separation of the system's accounts from all other records.

b. There shall be a written policy for the collection and disbursement of funds.

c. Those members of the governing board or body and staff who have been granted authorized responsibility for funds of the system shall be bonded.

3. Fee and payment schedules.

a. The family day-care system shall maintain a current written schedule of fees charged for the services provided. The applicable schedule or schedules shall be made available to families who seek or use the services of the system, to ~~home~~ homes that apply for membership in the system, and to the department as part of the application for licensure.

b. The family day-care system shall establish and maintain a current written schedule of payments to be made to homes that are members of the system. This schedule shall specify the amount of payment, conditions of payment, and frequency of payment. It shall be provided to all homes that are members of the system and also to the department as part of the application for licensure. When applicable, this schedule shall also be made available to families who seek or use the services of the system.

E. Relationship to the licensing authority.

1. The family day-care system shall submit to the department such reasonable reports and information as it may require. (See § ~~63.1-203~~ 63.2-1708 of the Code of Virginia.)

2. The system's books and records shall be made available for inspection by the department's representative, upon request. (See § ~~63.1-198~~ 63.2-1706 of the Code of Virginia.)

3. The licensee, governing board, or its official representative shall notify the department when any major change is anticipated in the program, services provided, or administrative structure. When such a change occurs, which was not ~~anticipate~~ anticipated, this notification shall be provided no later than 10 days following the change. The department shall also be notified within five working days whenever a new director is employed by the family day-care system.

F. Family day-care system setting.

1. The family day-care system shall have an office ~~which~~ that shall serve as the headquarters of the system.

2. This office shall have:

a. Sufficient space for administration of the system, including all clerical functions;

b. Sufficient space to maintain privacy and confidentiality for conferences with parents who seek or use the services of the system and family day-care home operators who are members of the system; and

c. At least one working telephone, other than a pay phone, with a listed number ~~which~~ that is available for system business. An emergency phone number shall be provided for the use of the homes in the system during any hours that children are in care if the system's telephone is not manned during those hours.

G. Determination of the number of homes that may be under contract to the system. In order to ensure timely and adequate service delivery, the maximum number of homes that may be under contract of the system shall be based on the following factors:

1. The number of system's office staff (NOTE: Persons who are approved as day-care providers and their assistants are not considered to be system's office staff.);

2. The geographical dispersion of homes with relation to the system office;

3. The type or types and needs of children served by the system;

4. The financial capabilities of the system; and

5. ~~They~~ The types of program or programs and services offered by the system.

VA.R. Doc. No. R13-3662; Filed May 17, 2013, 1:08 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-131. Standards for Licensed Child-Placing Agencies (amending 22VAC40-131-40).**

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

Effective Date: July 17, 2013.

Agency Contact: Joni Baldwin, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7162, or email joni.baldwin@dss.virginia.gov.

Summary:

Pursuant to Chapters 182 and 545 of the 2013 Acts of Assembly, the requirements for a licensee to give evidence of financial responsibility and develop an annual budget are repealed.

22VAC40-131-40. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed child-placing agencies and terms of the current license issued by the department; and with relevant federal, state, or local laws and relevant regulations.

B. The licensee shall comply with its own policies and procedures.

~~C. The licensee shall give evidence of financial responsibility.~~

~~D.~~ C. The licensee shall be of good character and reputation as defined in 22VAC40-80-10.

~~E.~~ D. The licensee shall meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

~~F.~~ E. The licensee shall meet the requirements specified in 22VAC40-80, General Procedures and Information for Licensure.

~~G.~~ F. The licensee shall maintain sufficient funds to ensure operation in compliance with this chapter. ~~The licensee shall develop a budget for a period of 12 months of operation.~~

~~H.~~ G. The licensee shall ensure that the child-placing agency makes and maintains such records and other information as required by this chapter. The licensee shall submit, or make available for inspection to the department's representative, records, reports, and other information as necessary to assist the department in determining the licensee's compliance with this chapter and applicable law.

~~I.~~ H. The licensee shall allow the department's representative to interview the licensee's employees and individuals under its custody, control, direction, or supervision.

~~J.~~ I. The licensee shall at all times allow the department's representative reasonable opportunities to conduct announced and unannounced inspections of the licensee's approved homes.

~~K.~~ J. The licensee shall:

1. Correct any areas of noncompliance found during inspections;

2. Take necessary actions to prevent reoccurrence of noncompliance; and

3. Make and implement necessary revisions to its policies and procedures.

~~L.~~ K. The licensee shall not disseminate, or cause directly or indirectly to be disseminated, statements regarding services that are untrue, deceptive, or misleading.

~~M.~~ L. The licensee shall ensure that information, brochures, and materials distributed or available to the public contain accurate and updated information.

~~N.~~ M. The licensee shall maintain ultimate responsibility for the health, safety, and well-being of children under its custody, control, and direction and shall ensure that an on-call licensee representative is available 24 hours a day 7 days each week to receive contacts from foster parents, children, and other staff of placement settings in which children have been placed by the licensee. The licensee shall provide interventions and follow-up services, as necessary.

VA.R. Doc. No. R13-3663; Filed May 17, 2013, 1:08 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-151. Standards for Licensed Children's Residential Facilities (amending 22VAC40-151-130; repealing 22VAC40-151-20).**

Statutory Authority: §§ 63.2-217 and 63.2-1737 of the Code of Virginia.

Effective Date: July 17, 2013.

Agency Contact: Sharon Lindsay, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7167, FAX (804) 726-7132, or email sharon.lindsay@dss.virginia.gov.

Summary:

Pursuant to Chapters 182 and 545 of the 2013 Acts of Assembly, the requirements for (i) the department to conduct an investigation of the financial responsibility of the applicant and (ii) the facility to prepare certain financial information annually are repealed.

22VAC40-151-20. ~~Investigation.~~ (Repealed.)

~~The department will arrange and conduct an on-site inspection of the facility, a thorough review of the activities and services, and an investigation of the financial responsibility, character, and reputation of the applicant.~~

22VAC40-151-130. Fiscal accountability.

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

~~1. An operating statement showing revenue and expenses for the fiscal year just ended;~~

~~2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and~~

~~3. A balance sheet showing assets and liabilities for the fiscal year just ended.~~

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

~~C.~~ B. The provider shall develop and implement written policies and procedures that address the day-to-day handling of facility funds to include:

1. Handling of deposits;

2. Writing of checks; and

3. Handling of petty cash.

VA.R. Doc. No. R13-3664; Filed May 17, 2013, 1:09 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Final Regulation

REGISTRAR'S NOTICE: The Department of Taxation is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Taxation will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **23VAC10-240. Motor Vehicle Fuel Sales Tax Regulations (repealing 23VAC10-240-10 through 23VAC10-240-470).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: July 17, 2013.

Agency Contact: Joe Mayer, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Background: The Motor Vehicle Fuel Sales Tax Regulations were promulgated in 1984 to provide guidance for the Motor Vehicle Fuel Sales Tax imposed at the rate of two percent in the localities that comprise the Northern Virginia Transportation District and the Potomac and Rappahannock Transportation District. In 2007, the Department of Taxation repealed 25 sections of the regulations as they were either obsolete or offered no additional guidance to clear and unambiguous statutory language.

Chapter 532 of the 2009 Acts of Assembly restructured the Motor Vehicle Fuel Sales Tax by changing the imposition of the tax from the retail sale of the fuel at the pump to the wholesale sale of fuel by distributors to retailers. As a result, the Motor Vehicle Fuel Sales Tax Regulations became obsolete. On November 19, 2009, the Department of Taxation issued comprehensive guidelines for the restructured tax. Chapters 217 and 225 of the 2012 Acts of Assembly transferred the administration of the tax from the Department of Taxation to the Department of Motor Vehicles effective July 1, 2013. This legislation was a recommendation of Governor McDonnell's Government Reform and Restructuring Commission, which worked to develop proposals for reforming state government to reduce costs and improve service delivery.

Section 58.1-203 A of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department of Taxation. Effective July 1, 2013, the Department of Motor Vehicles will assume administration of this tax and the Department of Taxation will no longer be authorized to maintain this regulation.

Summary:

Chapters 217 and 225 of the 2012 Acts of Assembly transferred the administration of the motor vehicle fuel sales tax from the Department of Taxation to the Department of Motor Vehicles. Since the Department of Taxation no longer has authority over this tax effective July 1, 2013, the Tax Commissioner is repealing this regulation.

VA.R. Doc. No. R13-3509; Filed May 24, 2013, 4:44 p.m.

STATE AIR POLLUTION CONTROL BOARD

Proposed State Implementation Plan Revision - Ambient Air Quality Standards

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is 9VAC5-30, Ambient Air Quality Standards (Rev. B13).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: June 17, 2013, to July 17, 2013.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to an existing regulation concerning ambient air quality standards. On January 15, 2013 (78 FR 3086), EPA revised the National Ambient Air Quality Standard (NAAQS) for fine particulate ($PM_{2.5}$). The annual arithmetic mean concentration has been set at 12 $\mu g/m^3$, and the standard for the 24-hour concentration is being retained at 35 $\mu g/m^3$. 9VAC5-30 contains the specific criteria pollutant standards set out in 40 CFR Part 50. Therefore, this chapter is the action effectively implementing the EPA requirements and must be revised accordingly.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. DEQ plans to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website: http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA, telephone (276) 676-4800,

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TDD (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Proposed State Implementation Plan Revision - Definition of Regulated NSR Pollutant

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas, Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: June 17, 2013, to July 17, 2013.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act by the provisions of § 2.2-4006 A 3 and 4 c of the Administrative Process Act because they consist of the correction of a technical error and because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to an existing regulation concerning major new source review (NSR) for prevention of significant deterioration (PSD) areas. On October 25, 2012 (77 FR 65107), EPA promulgated final amendments revising the NSR permitting program for PSD areas. The amendments revise the definition of "regulated NSR pollutant" to remove the term "particulate matter emissions" from the requirement to include the condensable particulate matter fraction. "Particulate matter emissions" refers to the non-criteria indicator for particulate matter (PM) that is regulated under various new source performance standards (NSPSs), using EPA Method 5 for the compliance test. EPA has determined that only PM_{10} and $PM_{2.5}$-indicators of PM used for the national ambient air quality standards may include condensable PM, unless a specific NSPS or applicable implementation plan otherwise requires the condensable portion to be included. In Virginia, where the state is administering the NSR program under an approved SIP, the state may adopt and submit revisions to the SIP to reflect the rule revisions. The revised SIP should be the same as or equivalent to the revised federal program. Additionally, a regulatory citation is being corrected.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. DEQ plans to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website: http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA, telephone (276) 676-4800,

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TDD (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 22, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2013-00045

Concerning the establishment of a renewable energy pilot program for third party power purchase agreements

ORDER PROPOSING GUIDELINES

On March 14, 2013, the Virginia General Assembly approved Chapter 382 of the Virginia Acts of Assembly ("Chapter 382"), requiring the State Corporation Commission ("Commission") to conduct a renewable energy pilot program for third party power purchase agreements and to establish certain guidelines regarding its implementation. Chapter 382 specifically provides that the Commission must establish guidelines concerning (i) information to be provided in written notices and (ii) procedures for collecting and posting information derived from such notices on the Commission's website. In addition, the Commission may establish general guidelines for its administration of the pilot program.

As set forth in Chapter 382, parties who wish to enter into a power purchase agreement under the pilot program must provide written notice to the Commission and to the pilot utility of the parties' intent to enter into such agreement not less than thirty days before the effective date of such agreement. Pursuant to Chapter 382, the Commission must establish guidelines concerning the information to be included in the provision of such written notice. In addition, the Commission must establish guidelines concerning the procedures for aggregating and posting the information included in such written notices on the Commission's website. This information must include the total capacity utilized by pilot projects for which notice has been received and the capacity remaining available for future pilot projects. Finally, the Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of the pilot program.

The Commission Staff ("Staff") has prepared proposed guidelines in accordance with Chapter 382. A draft of these proposed guidelines is attached to this Order for review and comment by interested persons. Each third party power purchase agreement established pursuant to the pilot program should be in accordance with these guidelines, once established by further Commission order, and should be in compliance with the statutory directives set forth by the General Assembly. The Commission will review comments on the proposed guidelines from interested persons before formally establishing Commission guidelines pursuant to Chapter 382. Comments on the proposed guidelines may be filed in this proceeding within thirty days from the date of this Order.

In order to promote broad dissemination of the proposed guidelines, we direct the Commission's Division of Energy Regulation to provide copies of this Order and the proposed guidelines by electronic transmission or by mail to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE-2013-00045.

(2) Comments on the proposed guidelines shall be filed on or before thirty (30) days from the date of this Order. Interested persons wishing to comment or propose modifications or supplements to the proposed guidelines shall file an original and fifteen (15) copies of such comments or proposals with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments or proposals electronically may do so by following the instructions on the Commission's website: http://www.scc.virginia.gov/case.

(3) The Commission's Division of Information Resources shall make a downloadable version of the proposed guidelines available to the public at the Commission's website: http://www.scc.virginia.gov/case. The Clerk of the Commission shall make a copy of the proposed guidelines available, free of charge, in response to any written request for one.

(4) The Commission's Division of Energy Regulation shall transmit electronically or by mail a copy of this Order and proposed guidelines to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

(5) This matter is continued generally for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Senator John Edwards, P.O. Box 1179,

Roanoke, Virginia 24006-1179; Delegate David Yancey, P.O. Box 1163, Newport News, Virginia 23601; Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219. A copy shall be delivered to the Commission's Office of General Counsel and Division of Energy Regulation.

PROPOSED GUIDELINES REGARDING NOTICE INFORMATION FOR A THIRD PARTY RENEWABLE POWER PURCHASE AGREEMENT

A. Purpose.

The Commission is establishing these guidelines pursuant to Chapter 382 of the 2013 Virginia Acts of Assembly ("Chapter 382") regarding a pilot program for third party power purchase agreements for renewable generation. Chapter 382 specifically provides that the State Corporation Commission ("Commission") must establish guidelines concerning (i) information to be provided in written notices and (ii) procedures for collecting and posting information derived from such notices on the Commission's website. In addition, the Commission may establish general guidelines for its administration of the pilot program.

B. Applicability.

These guidelines are applicable to any owner or operator of a solar-powered or wind-powered electricity generation facility (referred to herein as "owner-operator") located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, within the service territory of Dominion Virginia Power ("DVP"). Such a facility shall have a generation capacity of 50 kW to 1 MW and shall provide electricity to only one customer. The owner-operator shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility. The owner-operator also may be subject to requirements of its local governing body and the Virginia Department of Environmental Quality.

C. Filing of Notice.

Parties who wish to enter into a third party power purchase agreement under the pilot program must provide written notice to the Commission and to DVP of the parties' intent to enter into such agreement not less than thirty days before the effective date of such agreement.

D. Contents of Filing.

The owner-operator shall provide written notice to the Commission and DVP not less than thirty days before the effective date of such agreement and shall include the following information:

- Identity of the owner or operator of the facility.
- Identity of the eligible customer-generator.
- Location of the premise upon which the facility will be installed.
- Renewable source of the facility.
- Size of the facility.
- Expected date of operation of the facility.
- Duration of the third party purchase agreement.

E. Posting and Tracking.

Within three days of receiving a written notice of intent, the Commission will post to its website the cumulative amount of solar-powered and wind-powered generation capacity associated with the notice of intent. Within three days of the commercial operation of such facility, the owner-operator shall provide written notification of such commercial operation to the Commission and DVP. Within three days of receiving such written notice of commercial operation, the Commission will post to its website the cumulative amount of installed solar-powered and wind-powered generation capacity. Simultaneously, the capacity remaining available for future pilot projects also will be posted. The owner-generator also shall provide written notice to the Commission and DVP of any change in the generating capacity of the facility or in the parties to the third party power purchase agreement within three days of any such change.

VIRGINIA EMPLOYMENT COMMISSION

Periodic and Small Business Impact Review for Regulations Adopted by the Virginia Employment Commission Before July 1, 2005; Published Report of Findings

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Employment Commission has conducted a periodic review of:

16VAC5-10, Definitions and General Provisions

16VAC5-20, Unemployment Taxes

16VAC5-32, Required Records and Reports

16VAC5-42, Combined Employer Accounts

16VAC5-50, Employer Elections to Cover Multistate Workers

16VAC5-60, Benefits

16VAC5-70, Interstate and Multistate Claimants

16VAC5-80, Adjudication

The commission has determined that these regulations should be continued without change, amendment, or repeal, consistent with the stated objectives of applicable law (Title

60.2 of the Code of Virginia, the Virginia Unemployment Compensation Act (Act)), as the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important government functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

While the Commission has carefully considered the one public comment provided, it has determined that these particular regulations should be continued without change, amendment, or repeal. The Commission reached this determination after careful consideration of the proposed comment in light of the fundamental purpose of the Virginia Unemployment Compensation Act, the agency's statutory mandate, the rationale for the General Assembly's addition of the "subsequent employing unit" provision to the statute, and the 2011 Integrity Act amendments to the Federal Unemployment Tax Act. Any change in notice requirements, such as those proposed, which could have the effect of discouraging or suppressing the rate of participation by subsequent employers in the unemployment insurance (UI) claims adjudication process, administered under Article 5 (§ 60.2-619 et seq.) of Chapter 6 of the Act, could result in erroneous or improper payment of UI benefits to claimants who might otherwise not qualify for such benefits. That result would be inconsistent with the purpose of the Act and the Commission's statutory duties.

The primary purpose of the Act is to provide temporary income replacement to otherwise eligible individuals who are unemployed through no fault of their own. Ford Motor Co. v. Unemployment Compensation Commission, 191 Va. 812, 63 S.E. 2d 28 (1951). Moreover, the General Assembly has mandated that the Commission maintain a solvent trust fund to pay benefits to those eligible individuals who are involuntarily unemployed. See § 60.2-113 of the Code of Virginia. To help ensure that benefits were paid only to individuals who were unemployed through no fault of their own, the General Assembly amended the provisions of §§ 60.2-618 and 60.2-619 of the Code of Virginia to require the Commission to give notice of a claim to employers for whom a claimant worked less than 30 days prior to filing a claim and to determine a claimant's qualification for benefits based on any separation from work from such employer, designated in the statute as a "subsequent employing unit." The General Assembly became aware of situations under the former law where an individual was laid off from his liable employer, went to work for another employer for less than 30 days, and was then discharged for an act of misconduct such as stealing. Prior to the enactment of the "subsequent employing unit" provisions, the Commission had no statutory authority to address any separation from work other than from an employer for whom the claimant worked at least 30 days.

In 2011, Congress amended the provisions of the Federal Unemployment Tax Act to require all states to amend their laws in certain ways to reduce the amount of erroneous payments of unemployment compensation. One of those changes required states to adopt laws that penalized employers for failing to respond adequately or promptly to a written request for information. Under the conforming law passed by the General Assembly in 2013 (Senate Bill 775), an employer would be subject to penalty if it failed to promptly or adequately respond to a written request for information four times in a four-year period. The penalties include a $75 assessment on the third offense and charges to their tax accounts after the fourth such incident. If the proposed change was adopted, the Commission could be viewed as discouraging employers from participating in the claims process if such employer did not have a direct pecuniary interest in the outcome and subsequently penalize the employer for not providing prompt or adequate information about the claim.

Any UI benefits paid by the Commission must be recouped from employers covered by the Act by direct charges to respective employer accounts, or indirect charges through pool cost and building fund charges. Discouraging subsequent employers, who have information on the qualification of a claimant for benefits, from participating in this process could likely increase the risk of improper payment of UI benefits. This would result in attendant charge(s) to the liable employer, i.e., the last 30 day/240 hour employer. The resulting charge from such lack of participation by subsequent employers could not only increase the tax rate of the specific liable employer charged, but could also increase the tax rate across the board for all employers in the Commonwealth who pay into the Unemployment Compensation Fund ("Trust Fund") by reducing the overall solvency of the Trust Fund. A tax increase, whether direct or indirect, due to an increase in improper payments would be inconsistent with the Commission's statutory mandate and contrary to the best interests of the Commonwealth.

Granted, the most recent public comment, with its attendant proposed notice modifications, seeks to cure the agency's prior objection to past, similar such public comment to avoid misleading certain subsequent employers about their nonliability for direct benefit charges. For example, dollar for dollar reimbursable employers, mostly government entities and certain non-profit organizations, could in some circumstances, depending upon the base period [wage] calculations for certain claimants, incur a direct charge to their employer tax account, even when such employers have been joined as a subsequent employing unit to a claim filed. While the proposed changes to the notice provisions contained in the most recent public comment attempt to make these dollar for dollar reimbursable employers more aware of such direct charge circumstances, it does not change the fact that such proposal could actually increase the tax burden or

claims cost for businesses/employers covered by the Act. While the most recent public comment has suggested some further notice revisions to better apprise dollar for dollar subsequent employers of this fact, the Commission must reiterate that the proposed notice revisions do not change the fact that they could still result in increased improper payments and an increased tax burden on employers covered by the Act.

In conclusion, the Commission has conducted its periodic review of its regulations in a manner consistent with the stated objectives of applicable law. The Commission finds the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important government functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

Contact Information: Coleman Walsh, Chief Administrative Law Judge, 703 East Main Street, Room 126, Richmond, VA 23219, telephone (804) 786-7263, FAX (804) 786-9034, or email coleman.walsh@vec.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Meetings for Draft Water Quality Restoration Study and Implementation Planning for the James River and Tributaries Impaired for Bacteria

Public meeting: Charles City Government School Board Administration Building Auditorium, 10900 Courthouse Road, Charles City, VA 23030. Public meetings will be held on Wednesday, June 26, 2013, at 2 p.m. and 6 p.m. Both meetings are open to the public. Meetings will cover the same content.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing a draft total maximum daily load (TMDL) study to restore water quality and the initiation of the Implementation Plan (IP) for the James River and tributaries in Henrico, Prince George, Charles City, and Surry counties.

Meeting description: Public meetings provide an opportunity for the public to share their knowledge of the watershed and learn about pollution affecting community waters. Meetings will feature a summary of information from the draft TMDL, including watershed land use, water quality monitoring, suspected sources of bacteria, and the reduction of source bacteria required to meet water quality standards. It will feature an introduction to Implementation Planning (IP) for the watershed. Those attending the meeting are invited to ask questions, contribute their knowledge of the watershed, and participate in the working groups as part of the IP phase.

Description of study: Virginia agencies have been working to identify sources of bacteria in the James River and its tributaries:

Stream	County/City	Length (mi.)	Impairment
Crewes Channel	Henrico	3.19	Bacteria (Primary Contact / Swimming Use)
Western Run	Henrico	1.85	
West Run	Charles City	1.86	
Wards Creek	Prince George	8.47	
Upper Chippokes Creek	Prince George, Surry	5.61	
James River (mainstem)	Prince George, Charles City, Surry	3.76 (sq. miles)	

These streams are impaired for failure to meet the Primary Contact (Recreational or Swimming) designated use, due to high concentrations of bacteria. The study reports on the sources of bacteria and recommends total maximum daily loads, or TMDLs, for impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels need to be reduced to the TMDL amount. The draft TMDL report will be available at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx approximately one week prior to the meeting for review. The Implementation Planning (IP) phase utilizes the source information and reductions identified in the TMDL to devise one scenario of watershed measures, or best management practices (BMPs). BMPs can be implemented throughout the watershed in order to meet the TMDL bacteria reduction goals. The IP phase requires the participation of watershed stakeholders at working group meetings to evaluate BMPs for the watershed. A steering committee, made up of working group members, is designated to guide the process.

How a decision is made: After the public meeting and all public comments have been considered and addressed, DEQ will submit the final TMDL report to the U.S. Environmental Protection Agency and the State Water Control Board for approval. When the IP is complete following working group and steering committee meetings and a final public meeting and comment period, the document will be sent to the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include name, address, and telephone number and be received by DEQ during the comment period, which will begin Thursday, June 27, 2013, and end Monday, July 29, 2013.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

STATE BOARD OF HEALTH

Notice of Periodic and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Health is conducting a periodic review of 12VAC5-218, Rules and Regulations Governing Outpatient Health Data Reporting.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 17, 2013, and ends July 17, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Debbie Condrey, CIO and Director of the Office of Information Management and Health IT, State Board of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7118, or email debbie.condrey@vdh.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

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 May 16, 2013. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Twenty-Seven (13)

Virginia's Instant Game Lottery 1417 "Millions To The Max" Final Rules for Game Operation (effective April 5, 2013)

Director's Order Number Twenty-Eight (13)

Virginia Lottery's "Cornhole Cash™ 2nd Chance Sweepstakes" Final Requirements for Operation (effective May 8, 2013)

Director's Order Number Thirty (13)

Virginia's Instant Game Lottery 1430 "Cornhole Cash™" Final Rules for Game Operation (effective May 8, 2013)

Director's Order Number Thirty-Eight (13)

Virginia Lottery's "Play For Keeps Sweeps" Sweepstakes Final Requirements for Operation (effective nunc pro tunc to April 17, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Thirty-Nine (13)

Virginia Lottery's "Frisbee® 2nd Chance Sweepstakes" Final Requirements for Operation (effective May 14, 2013)

Director's Order Number Forty (13)

Virginia Lottery's "Skee-Ball® 2nd Chance Sweepstakes" Final Requirements for Operation (effective May 14, 2013)

Director's Order Number Forty-One (13)

Virginia's Instant Game Lottery 1424 "Skee-Ball®" Final Rules for Game Operation (effective May 8, 2013)

Director's Order Number Forty-Two (13)

Virginia's Instant Game Lottery 1422 "Frisbee®" Final Rules for Game Operation (effective May 8, 2013)

* * *

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on May 16, 2013.

Director's Order Number Thirty-Six (13)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on April 5, 2013.

Game 1175	Quick $100's
Game 1177	Quick Silver
Game 1223	Lucky Bucks Doubler
Game 1309	In the Chips
Game 1314	Triple 777 **(TOP)**

Game 1315	Lucky Gold
Game 1332	Bonus Cashword **(TOP)**
Game 1334	Quick Bucks
Game 1344	Win it All **(TOP)**
Game 1348	Some Like it Hot
Game 1358	Ice Chest
Game 1361	Grab Bag Bucks
Game 1371	Redskins

The last day for lottery retailers to return for credit unsold tickets from any of these games will be May 10, 2013. The last day to redeem winning tickets for any of these games will be October 2, 2013, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of October 2, 2013, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia, and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order is effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
April 5, 2013

Director's Order Number Thirty-Seven (13)

Certain Virginia Game Sweepstakes; End of Sweepstakes

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery sweepstakes will officially end at midnight on Tuesday, April 16, 2013.

Virginia Lottery's "Play for Keeps Sweeps"
Sweepstakes (18) 13

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia, and at any Virginia Lottery regional office. A copy may be requested by mail by writing to: Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order is effective nunc pro tunc to April 16, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
April 22, 2013

BOARD OF MEDICAL ASSISTANCE SERVICES

Institutions for Mental Disease Reimbursement Changes - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (USC § 1396a(a)(13)))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the rules governing reimbursement for services furnished to individuals under age 21 who reside in institutions for mental disease (IMDs), which are inpatient psychiatric facilities such as private and state freestanding psychiatric hospitals and residential treatment facilities (Level C). The U.S. Court of Appeals issued a final decision on May 8, 2012, regarding reimbursement for these services that compels this regulatory action by the department.

In response to the court decision and in accordance with CMS guidance, DMAS is changing the relevant regulations to permit separate billing for ancillary services for individuals under age 21 residing in an IMD only when the IMD (i) arranges for and oversees the provision of all ancillary services, including ancillary services furnished through contracted or employed Medicaid providers; (ii) maintains medical records of care furnished to the individual; and (iii) ensures that all services are furnished under the direction of a physician. Allowable ancillary services will vary by provider type.

DMAS will continue to enforce the requirement that IMD individuals' plans of care be comprehensive, covering medical, psychological, social, behavioral, and developmental needs (including emergency services). In addition, DMAS will require IMDs to: (i) use contracted or employed Medicaid providers for ancillary services furnished to individuals under age 21 residing in the IMD; (ii) make referrals to these contracted and employed Medicaid providers; and (iii) obtain and maintain medical records from all ancillary service providers that are not covered by the per diem.

DMAS has established detailed guidance on exactly how and when the IMDs must update plans of care, establish contracts, make referrals, and obtain medical records. If these requirements are not met, DMAS has established detailed criteria for audits and retractions of paid claims.

There will be no change to annual expenditures.

DMAS is submitting an emergency regulation, pursuant to § 2.2-4011 of the Code of Virginia, to the Governor for approval. Pending the Governor's approval, DMAS will provide copies of said emergency regulations to all requesters. Please forward a written request to the Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA, 23219. Further information is also available at www.townhall.virginia.gov.

Contact Information: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA, 23219, telephone (804) 371-8856, FAX (804) 786-1680, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Code of Virginia Title Recodifications

The Virginia Code Commission, which is responsible for publishing and maintaining the Code of Virginia, is considering placing Title 23, Educational Institutions**,** on its work plan as the commission's next recodification project to begin in 2014, followed by Title 36, Housing**,** in 2016. Neither title has been recodified since its enactment as part of the current Code of Virginia of 1950.

Generally, the commission selects a title to recodify based on the need to logically reorganize content, modernize language, and reflect current Code of Virginia style and numbering schemes. To the extent practical, the commission avoids making substantive changes to the statutory text. In the event a substantive change is made, the change is highlighted and explained in the final report.

Other titles presented as recodification candidates in the future include Titles 8.01 (Civil Remedies and Procedure), 22.1 (Education), 40.1 (Labor and Employment), 45.1 (Mines and Mining), and 55 (Property and Conveyances).

The commission is currently working on Title 33.1, Highways, Bridges and Ferries, assisted by an advisory panel of practitioners experienced in this area. Work on proposed Title 33.2, Highways and Other Surface Transportation Systems, is expected to be finalized by the end of 2013 with resulting legislation introduced at the 2014 Session of the General Assembly. More information on title recodifications can be found on the commission's website: http://codecommission.dls.virginia.gov/title_33_1.shtml.

Send comments to Jane Chaffin at jchaffin@dls.virginia.gov or General Assembly Building, 2nd Floor, 201 North Ninth Street, Richmond, VA 23219, by June 18, 2013.

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22VAC40-880, Child Support Enforcement Program.**

Publication: 27:24 VA.R. 2580 August 1, 2011.

Correction to Notice of Intended Regulatory Action:

Page 2580, column 1, 22VAC40-880, paragraph 2 (public hearing). The notice incorrectly indicated that the agency intended to hold a public hearing on the proposed action after publication in the Virginia Register. In addition to submitting comments through the U.S. mail, email, and the Virginia Regulatory Town Hall public comment forum, the public is welcome to provide comments at regularly scheduled State Board of Social Services' meetings during the public comment portion of the agendas.

VA.R. Doc. No. R11-2892; Filed May 29, 2013, 11:43 a.m.

STATE CORPORATION COMMISSION

Title of Regulation: **24VAC15-10. Standards and Procedures Governing Intrastate Rail Rates in Virginia.**

Publication: 29:20 VA.R. 2516 June 3, 2013

Correction to Final Regulation:

Page 2516, at the end of the regulation add:

VA.R. Doc. No. R13-3579: Filed May 7, 2013, 12:13 p.m.