



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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 18 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.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### August 2013 through September 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 ( <b>Tuesday</b> )	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 ( <b>Monday</b> )	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014
30:27	August 20, 2014	September 8, 2014

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Initial Agency Notice

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Ivy Sharpe.

Nature of Petitioner's Request: Changes to 18VAC95-30-180. Preceptors. The preceptor must attend annual training related to the ALF AIT program after the application for new preceptors has been approved or prior to the renewal date of the preceptor's license. Training will be administered by the board or by an approved trainer. The preceptor shall not allow the trainee to assume administrator's duties or responsibilities without the presence of the preceptor only if the trainee has not been approved as an acting administrator. The preceptor shall enter into an ALF AIT contract agreement with the trainee. The preceptor and the trainee must agree to the starting and ending dates of the ALF AIT program. The contract agreement must be signed by the preceptor and the trainee. The contract agreement form will be prescribed by the board.

Changes to 18VAC95-30-190. Reporting requirements. The trainee shall submit an evaluation of the preceptor within 10 days following the completion of the ALF AIT program or if the program is interrupted because the registered preceptor is unable to serve. The evaluation form will be prescribed by the board.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Register of Regulations and posted on the Virginia Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Comment will be requested from interested parties until September 10, 2013. The petition and copies of all comments will be considered by the Board of Long-Term Care Administrators at its meeting scheduled for September 24, 2013. After considering the request and reviewing the comments, the board will decide whether to initiate rulemaking or deny the petition and retain the current requirements.

Public Comment Deadline: September 10, 2013.

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](mailto:elaine.yeatts@dhp.virginia.gov).

V.A.R. Doc. No. R; Filed July 15, 2013, 3:09 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## 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 **8VAC20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The purpose of the proposed action is to comprehensively amend these regulations, including several amendments that are needed to comport with legislative changes made by Chapters 83 and 172 of the 2012 Acts of Assembly about the graduation and completion index; Chapters 640, 672, and 692 of the 2013 Acts of Assembly about student growth indicators; Chapters 498 and 530 of the 2013 Acts of Assembly about cardiopulmonary resuscitation; Chapter 710 of the 2013 Acts of Assembly about the threat assessment team; and Chapter 609 of the 2013 Acts of Assembly about lock-down drills.

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

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

Public Comment Deadline: September 11, 2013.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email [anne.wescott@doe.virginia.gov](mailto:anne.wescott@doe.virginia.gov).

VA.R. Doc. No. R13-3789; Filed July 23, 2013, 8:18 a.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-260, Water Quality Standards**. The purpose of the proposed action is to include updated numerical and narrative criteria, use designations, and other policies contained in the Water Quality Standards. The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting regulations that are technically correct, necessary, and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act 305(b) report and on the 303(d) list. This rulemaking is needed because the last triennial review was completed in February 2010 and new scientific information is available to

update the water quality standards. Changes to the regulation are also needed to improve permitting, monitoring, and assessment programs. In addition, the Department of Environmental Quality must fulfill the legal mandates for a three-year review under § 62.1-44.15 (3a) of the Code of Virginia and 40 CFR Part 131.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

Public Comment Deadline: October 11, 2013.

Agency Contact: David Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4032, TTY (804) 698-4021, or email [david.whitehurst@deq.virginia.gov](mailto:david.whitehurst@deq.virginia.gov).

VA.R. Doc. No. R13-3788; Filed July 22, 2013, 9:28 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Waste Management Facility Operators intends to consider amending the following regulations: **18VAC155-20, Waste Management Facility Operators Regulations**. The purpose of the proposed action is to conduct a general review of regulations, including but not limited to the definitions, entry requirements, license classes, and training and education requirements. The proposed amendments will respond to changes in the industry and address concerns brought to the board by its regulants and staff.

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

Statutory Authority: §§ 54.1-201 and 54.1-2211 of the Code of Virginia.

Public Comment Deadline: September 11, 2013.

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](mailto:wastemgt@dpor.virginia.gov).

VA.R. Doc. No. R13-3737; Filed July 22, 2013, 4:43 p.m.

# REGULATIONS

For information concerning the different types of regulations, see the Information Page.

## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text.  
Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

#### Final Regulation

**Title of Regulation:** 4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-65).

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Effective Date:** August 15, 2013.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendments create a one-day nonresident trip fishing license at a fee of \$7.00 and reduce the fee of the Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees from \$8.00 to \$7.00.*

**4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.**

In accordance with the authority of the board under § 29.1-103 (16) of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
1-year Resident License to Hunt, for licensees 16 years of age or older	\$22.00
2-year Resident License to Hunt, for licensees 16 years of age or older	\$43.00

3-year Resident License to Hunt, for licensees 16 years of age or older	\$64.00
4-year Resident License to Hunt, for licensees 16 years of age or older	\$85.00
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$15.00
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$8.00
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	\$7.50
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Fish)	\$132.00
Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$255.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:	
through 44 years of age	\$260.00
45 through 50 years of age	\$210.00
51 through 55 years of age	\$160.00
56 through 60 years of age	\$110.00
61 through 64 years of age	\$60.00
65 years of age and over	\$20.00
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00

# Regulations

Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	\$15.00	16 years of age or older	\$85.00
		12 through 15 years of age	\$15.00
		under 12 years of age	\$12.00
Virginia Resident Licenses for Additional Hunting Privileges		Nonresident Archery License to Hunt with bow and arrow during archery hunting season	\$30.00
Type license or permit	Fee	Nonresident Crossbow License to Hunt with crossbow during archery hunting season	\$30.00
Resident Bear, Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$22.00	Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00
Resident Junior Bear, Deer, and Turkey Hunting License, for licensees under 16 years of age	\$7.50	Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00
Resident Archery License to Hunt with bow and arrow during archery hunting season	\$17.00	Nonresident Bonus Deer Permit	\$30.00
Resident Crossbow License to Hunt with crossbow during archery hunting season	\$17.00	Miscellaneous Licenses or Permits to Hunt	
Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00	Type license or permit	Fee
Resident Bonus Deer Permit	\$17.00	Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50
Virginia Nonresident Licenses to Hunt		Waterfowl Hunting Floating Blind in Public Waters License	\$40.00
Type license	Fee	Foxhound Training Preserve License	\$17.00
Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00	Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00
Nonresident Three-Day Trip License to Hunt	\$59.00	Virginia Resident and Nonresident Licenses to Trap	
Nonresident Youth License to Hunt, for licensees:		Type license	Fee
under 12 years of age	\$12.00	1-year Resident License to Trap, for licensees 16 years of age or older	\$45.00
12 through 15 years of age	\$15.00	2-year Resident License to Trap, for licensees 16 years of age or older	\$89.00
Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$30.00	3-year Resident License to Trap, for licensees 16 years of age or older	\$133.00
Nonresident Lifetime License to Hunt	\$555.00	4-year Resident License to Trap, for licensees 16 years of age or older	\$177.00
Virginia Nonresident Licenses for Additional Hunting Privileges		County or City Resident License to Trap in County or City of Residence Only	\$20.00
Type license or permit	Fee	Resident Junior License to Trap, for licensees under 16 years of age	\$10.00
Nonresident Bear, Deer, and Turkey Hunting License, for licensees:		Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00



## Regulations

Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$20.00	56 through 60 years of age	\$110.00
		61 through 64 years of age	\$60.00
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00	65 years of age and over	\$20.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00	Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
Nonresident License to Trap	\$205.00	through 44 years of age	\$260.00
Virginia Resident Licenses to Fish		45 through 50 years of age	\$210.00
Type license	Fee	51 through 55 years of age	\$160.00
1-year Resident License to Freshwater Fish	\$22.00	56 through 60 years of age	\$110.00
2-year Resident License to Freshwater Fish	\$43.00	61 through 64 years of age	\$60.00
3-year Resident License to Freshwater Fish	\$64.00	65 years of age and over	\$20.00
4-year Resident License to Freshwater Fish	\$85.00	Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$15.00
County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	\$15.00
Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00	Virginia Nonresident Licenses to Fish	
Resident License to Fish in Designated Stocked Trout Waters	\$22.00	Type license	Fee
Resident License to Freshwater and Saltwater Fish	\$39.00	Nonresident License to Freshwater Fish	\$46.00
Resident License to Freshwater Fish for Five Consecutive Days	\$13.00	Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$46.00
Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00	Nonresident License to Freshwater and Saltwater Fish	\$70.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Hunt)	\$132.00	<u>Nonresident License to Freshwater Fish for One Day</u>	<u>\$7.00</u>
Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:		Nonresident License to Freshwater Fish for Five Consecutive Days	\$20.00
through 44 years of age	\$260.00	Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$30.00
45 through 50 years of age	\$210.00	Nonresident Special Lifetime License to Freshwater Fish	\$555.00
51 through 55 years of age	\$160.00	Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$555.00
		Miscellaneous Licenses or Permits to Fish	
		Type license or permit	Fee
		Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with	<del>\$8.00</del>

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Daily Use Fees	\$7.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00
Special Guest Fishing License	\$60.00

VA.R. Doc. No. R13-3716; Filed July 24, 2013, 1:20 a.m.

## Final Regulation

**Title of Regulation:** 4VAC15-30. **Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-50).**

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Effective Date:** August 15, 2013.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendment allows facilities accredited by the Association of Zoos and Aquariums to possess, transport, have transported, export, or import native and naturalized species with written approval from the Director of the Department of Game and Inland Fisheries or his designee.*

### 4VAC15-30-50. Possession, transportation, and release of wildlife by authorized persons.

A. Department employees in the performance of their official duties; U.S. government agencies' employees whose responsibility includes fisheries and wildlife management; and county, city or town animal control officers in the performance of their official duties related to public health concerns or problem wildlife removal, and individuals operating under conditions of a commercial nuisance animal permit issued by the department pursuant to §§ 29.1-412 and 29.1-417 of the Code of Virginia will be deemed to be permitted pursuant to this section to capture, temporarily hold or possess, transport, release, and when necessary humanely euthanize wildlife, provided that the methods of and documentation for the capture, possession, transport, release and euthanasia shall be in accordance with board policy.

B. Local animal shelters operating under the authority of, or under contract with, any county, city, or town with animal control responsibilities shall be authorized to receive, temporarily confine, and humanely euthanize wildlife, except for state or federal threatened and endangered species; federally protected migratory bird species; black bear; white-tailed deer; and wild turkey, provided that the methods of and documentation for the possession, confinement, and euthanasia shall be in accordance with conditions defined by the agency director. Provided further that any person may legally transport wildlife, except for those species listed

above, to an authorized animal shelter after contacting the facility to confirm the animal will be accepted.

C. Employees or agents of other state wildlife agencies while in the performance of their official duty in transporting wildlife through the Commonwealth will be deemed to be permitted pursuant to this section, provided that a list of animals to be transported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a letter of authorization from both the forwarding and receiving state agencies are provided to the department 24 hours prior to the transporting of such animals, and further provided that such animals shall not be liberated within the Commonwealth.

D. Employees or agents of government agencies, while in the performance of their official duties, may temporarily possess, transport, and dispose of carcasses of wild animals killed by vehicles, except for state or federal threatened and endangered species, and federally protected migratory bird species.

E. With prior written approval from the director or his designee and under conditions of an applicable department permit, institutions with bona fide accreditation from the Association of Zoos and Aquariums may possess, transport, have transported, export, or import native and naturalized species defined in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference into 4VAC15-20-50.

VA.R. Doc. No. R13-3717; Filed July 24, 2013, 10:31 a.m.

## Final Regulation

**Title of Regulation:** 4VAC15-40. **Game: In General (amending 4VAC15-40-21, 4VAC15-40-50, 4VAC15-40-70, 4VAC15-40-130, 4VAC15-40-240, 4VAC15-40-260, 4VAC15-40-285; adding 4VAC15-40-221).**

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Effective Date:** August 15, 2013.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendments (i) add the United States Department of Agriculture to the list of agencies permitted to carry out wild bird and wild animal control programs; (ii) allow dog training on squirrels during daylight hours on private lands and allow dog training on rabbits from one-half hour before sunrise to midnight on private lands; (iii) establish a 1000-yard boundary adjacent to Lands End Waterfowl Management Area within which waterfowl hunting is prohibited; (iv) prohibit intentionally set traps within 50 feet of exposed animal carcasses or parts; (v) allow the taking of designated game species and fur-bearing species on special permits during closed seasons with any type of*

lawful weapon; (vi) make a reference by proxy to Augusta County overt; (vii) prohibit the feeding of cervids year round in eight localities; (viii) prohibit the feeding of deer or elk during deer or elk hunting season; (ix) require that all feed be removed from any feeding site prior to September 1; and (x) consider any area where feed has been distributed a "baited" area for 10 days following the complete removal of the food.

**4VAC15-40-21. Special crossbow license; hunting with crossbows.**

There shall be a license to hunt with a crossbow during the special archery seasons that shall be in addition to the license required to hunt small game. The fee for the special crossbow license shall be \$12 for a resident and \$25 for a nonresident plus a \$.50 issuance fee. ~~The special crossbow license may be obtained from the clerk or agent of any county or city whose duty it is to sell licenses as specified in 4VAC15-20-65.~~

**4VAC15-40-50. Poisoning of wild birds and wild animals prohibited; certain control programs excepted.**

It shall be unlawful to put out poison at any time for the purpose of killing any wild birds and wild animals, provided that rats and mice may be poisoned on one's own property. The provisions of this section shall not apply to the Commissioner of Agriculture and Consumer Services, the United States Department of Agriculture, or his ~~their~~ representatives or cooperators, and those being assisted in a control program ~~following procedures developed under the "Virginia Nuisance Bird Law."~~ authorized by those agencies.

**4VAC15-40-70. Open dog training season.**

A. Private lands and certain military areas. It shall be lawful to train dogs during daylight hours on ~~rabbits squirrels~~ and nonmigratory game birds on private lands, and on rabbits and nonmigratory game birds on Fort A. P. Hill, Fort Pickett, and Quantico Marine Reservation. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on captive raised and properly marked mallards and pigeons so that they may be immediately shot or recovered, except on Sunday.

B. It shall be lawful to train dogs on rabbits on private lands from [ 1/2 hour before ] sunrise to midnight.

C. Designated portions of certain department-owned lands. It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area, and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-

raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

~~C. D.~~ Designated department-owned lands. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on the Weston Wildlife Management Area from September 1 to March 31, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

**4VAC15-40-130. Disturbing waterfowl adjacent to Lands End Waterfowl Management Area.**

It shall be unlawful to ~~take, attempt to take~~ hunt, pursue, or disturb waterfowl ~~within in~~ the public waters within 1,000 yards adjacent to the Lands End Waterfowl Management Area located adjacent to the Rappahannock River in King George County ~~for such distance offshore as may be established by the board and properly posted so as to give adequate notice to the public, provided that this section shall not abridge the privileges prescribed for landowners, and their lessees and permittees, in §§ 29.1-344 and 29.1-347 of the Code of Virginia.~~

**4VAC15-40-221. Restricted use of traps near exposed carcasses and animal parts.**

It shall be unlawful to intentionally set foothold traps, body-gripping traps, or snares within 50 feet of an animal carcass, or parts thereof, unless the carcass, or parts thereof, are completely covered at the time the trap is set or visited. For the purposes of this section, "completely covered" shall be defined as not being visible from above. Provided further, a "carcass" shall be defined as the body, portions of the body, meat, organs, or viscera of any animal, including fish. Feathers (including those with attached skin or entire bird wings), hair (with or without skin or hide), and bones that include no attached meat, organs, or viscera are excluded from this definition.

**4VAC15-40-240. Animal population control.**

Whenever biological evidence suggests that populations of game animals or fur-bearing animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever population reduction of a species is necessary to manage for another wildlife species, or whenever the health or general condition of a species indicates the need for population reduction, or whenever the threat of human public health and safety or significant economic loss indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction by licensed hunters or licensed trappers on areas prescribed by department wildlife biologists. Designated game species or fur-bearing species may be taken in excess of the general bag limits, during closed seasons, and with any type of lawful weapon [ , as defined in § 29.1-519 of the Code of Virginia and in board regulation, ] on special permits issued under this

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section under such conditions as may be prescribed by the director.

## **4VAC15-40-260. Sunday hunting on controlled shooting areas.**

A. Except as otherwise provided in the sections appearing in this chapter, it shall be lawful to hunt pen-raised game birds seven days a week as provided by § 29.1-514 of the Code of Virginia. The length of the hunting season on such preserves and the size of the bag limit shall be in accordance with rules of the board. For the purpose of this chapter, controlled shooting areas shall be defined as licensed shooting preserves.

B. It shall be unlawful to hunt pen-raised game birds on Sunday on controlled shooting areas in ~~those counties having a population of not less than 54,000, nor more than 55,000, Augusta County~~ or in any county or city which prohibits Sunday operation by ordinance.

## **4VAC15-40-285. Unauthorized feeding of deer cervids.**

A. It shall be unlawful for any person to place or distribute food, salt, minerals, or similar substances, to feed or attract deer cervids (i) at any time in the counties (including the cities and towns within) of Buchanan, Clarke, Dickenson, Frederick, Shenandoah, Warren, and Wise; (ii) during any deer or elk season within any county, city, or town that allows deer or elk hunting; and (iii) from September 1 through the first Saturday in January, both dates inclusive, elsewhere in the Commonwealth.

B. Any food, salt, minerals, or similar substances placed or distributed to feed or attract cervids prior to September 1 must be completely removed by September 1, and any area where food, salt, minerals, or similar substances were placed or distributed to feed or attract cervids shall be considered to be baited for 10 days following the complete removal of the items listed in this subsection.

C. ~~Not, upon~~ Upon written notification by department personnel, ~~shall any~~ no person shall continue to place or distribute any food, salt, mineral, or similar substances for any purpose if the placement of these materials results in the attraction of and/or feeding of deer cervids. After such notification, such person shall be in violation of this section if the placing, distribution, or presence of such food, salt, minerals, or similar substances continues.

D. No part of this regulation shall be construed to restrict bona fide agronomic plantings (including wildlife food plots), bona fide distribution of food to livestock, or wildlife management activities conducted or authorized by the department.

VA.R. Doc. No. R13-3718; Filed July 24, 2013, 6:20 a.m.

### **Final Regulation**

Title of Regulation: 4VAC15-50. Game: Bear (amending 4VAC15-50-11, 4VAC15-50-70, 4VAC15-50-110, 4VAC15-50-120; adding 4VAC15-50-12).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendments (i) adjust the bear hunting season in a number of counties or portions of counties; (ii) establish a youth and apprentice hunter statewide bear hunting day; (iii) eliminate an outdated provision pertaining to physical disability and use of crossbows; (iv) update the description of a border for allowable bear hound hunting in one county; and (v) adjust the length of bear hound training season in multiple counties or locations.*

## **4VAC15-50-11. Open season; generally.**

A. It shall be lawful to hunt bears within:

Location	Season
Accomack County	Closed
Albemarle County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Alleghany County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Amelia County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Amherst County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Appomattox County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Arlington County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Augusta County (North of US-250)	<del>Saturday prior to the fourth</del> <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.

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Augusta County (South of US-250)	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Charlotte County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Bath County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Chesapeake (City of)	October 1 through the first Saturday in January, both dates inclusive.
Bedford County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Chesterfield County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Bland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Clarke County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Botetourt County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Craig County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Brunswick County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Culpeper County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Buchanan County	<del>First Monday in December and for 17 consecutive hunting days following through the first Saturday in January, both dates inclusive.</del>	Cumberland County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Buckingham County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Dickenson County	<del>First Monday in December and for 17 consecutive hunting days following through the first Saturday in January, both dates inclusive.</del>
Campbell County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Dinwiddie County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Caroline County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Essex County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Carroll County	First Monday in December and for 17 consecutive hunting days following.	Fairfax County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Charles City County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Fauquier County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

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Floyd County	First Monday in December and for 17 consecutive hunting days following.	Henry County	First Monday in December and for 17 consecutive hunting days following.
Fluvanna County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Highland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Franklin County	First Monday in December and for 17 consecutive hunting days following.	Isle of Wight County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Frederick County	<del>Saturday prior to the fourth</del> Fourth Monday in November through the first Saturday in January, both dates inclusive.	James City County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Giles County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	King and Queen County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Gloucester County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	King George County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Goochland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	King William County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Grayson County	First Monday in December and for 17 consecutive hunting days following.	Lancaster County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Greene County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Lee County	First Monday in December <del>and for 17 consecutive hunting days following</del> through the first Saturday in January, both dates inclusive.
Greensville County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Loudoun County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Halifax County	<del>Second</del> [ <u>First Monday in December Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Louisa County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Hanover County	Fourth Monday in November through the first Saturday in January, both dates inclusive.		
Henrico County	Fourth Monday in November through the first Saturday in January, both dates inclusive.		

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Lunenburg County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Nottoway County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Madison County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Orange County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Mathews County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Page County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Mecklenburg County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Patrick County	First Monday in December and for 17 consecutive hunting days following.
Middlesex County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Pittsylvania County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Montgomery County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.	Powhatan County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Montgomery County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.	<u>Prince Edward County</u>	[ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
Nelson County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Prince George County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.
New Kent County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Prince William County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Northampton County	Closed	Pulaski County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.
Northumberland County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.	Pulaski County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
		Rappahannock County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
		Richmond County	<del>Second</del> [ <del>First Monday in December</del> <u>Monday nearest December 2</u> ] and for 5 consecutive hunting days following.

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Roanoke County	<del>Saturday prior to the fourth</del> <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.	Suffolk (City of)	October 1 through the first Saturday in January, both dates inclusive.
Rockbridge County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Surry County	<del>Second [ First Monday in December</del> <u>Monday nearest December 2 ]</u> and for 5 consecutive hunting days following.
Rockingham County	<del>Saturday prior to the fourth</del> <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.	Sussex County	<del>Second [ First Monday in December</del> <u>Monday nearest December 2 ]</u> and for 5 consecutive hunting days following.
Russell County (except on the Channels State Forest and Clinch Mountain WMA)	First Monday in December <del>and for 17 consecutive hunting days following</del> <u>through the first Saturday in January, both dates inclusive.</u>	Tazewell County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Russell County (on the Channels State Forest and Clinch Mountain WMA)	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Virginia Beach (City of)	October 1 through the first Saturday in January, both dates inclusive.
Scott County	First Monday in December <del>and for 17 consecutive hunting days following</del> <u>through the first Saturday in January, both dates inclusive.</u>	Warren County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Shenandoah County	<del>Saturday prior to the fourth</del> <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.	Washington County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.
Smyth County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.	Washington County (northwest of I-81 and east of Route 19)	<del>Fourth Monday in November</del> <u>First Monday in December</u> through the first Saturday in January, both dates inclusive.
Smyth County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Washington County (northwest of I-81 and west of Route 19)	First Monday in December and for 17 consecutive hunting days following.
Southampton County	<del>Second [ First Monday in December</del> <u>Monday nearest December 2 ]</u> and for 5 consecutive hunting days following.	Westmoreland County	<del>Second [ First Monday in December</del> <u>Monday nearest December 2 ]</u> and for 5 consecutive hunting days following.
Spotsylvania County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Wise County	First Monday in December <del>and for 17 consecutive hunting days following</del> <u>through the first Saturday in January, both dates inclusive.</u>
Stafford County	Fourth Monday in November through the first Saturday in January, both dates inclusive.	Wythe County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.



Wythe County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
York County	Second [ <del>First Monday in December</del> Monday nearest <u>December 2</u> ] and for 5 consecutive hunting days following.

~~E. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4VAC15-40-20 B, to hunt bear subject to the provisions of subsections A through D of this section. For the purpose of the application of subsections A through D to this subsection the phrase "bow and arrow" includes crossbow.~~

**4VAC15-50-110. Use of dogs in hunting bear.**

A. It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and in the counties of Amherst (west of ~~U.S. Route 29~~ Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, and Nelson (west of Route 151); and within the boundaries of the national forests, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. It shall be unlawful to use dogs for the hunting of bear during the first 12 hunting days of the open season for hunting deer in the counties of Greene and Madison, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to use dogs for the hunting of bear in the counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast and Cripple Creek on the south); in the city of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew wildlife management areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

**4VAC15-50-120. Bear hound training season.**

~~A. Except as otherwise specifically provided in the sections appearing in this chapter, it~~ It shall be lawful to chase black bear with dogs, without capturing or taking, from the second Saturday in August through the last Saturday in September, both dates inclusive, in all counties and cities or in the portions in which bear hunting is permitted except in the counties of Accomack, Amelia, Appomattox, Brunswick, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Gloucester, Goochland, Grayson, Greensville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery (south of Interstate 81), New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince

B. Except as provided in the subsection A of this section, bears may be hunted from the Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city that allows bear hunting.

**4VAC15-50-12. Youth and apprentice hunter bear hunting day.**

It shall be lawful for hunters 15 years of age and under and holders of a valid apprentice hunting license, when in compliance with all applicable laws and license requirements, to hunt bears on the last Saturday in September when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Adult hunters accompanying youth or apprentice bear hunters on this day may not carry or discharge weapons. Bear bag limit, weight limits, and all other take restrictions specifically provided in the sections appearing in this chapter apply to this youth day. Bear hunting with dogs is prohibited except any place where there is a bear hound training season currently in progress as defined in 4VAC15-50-120 (Bear hound training season) and tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

**4VAC15-50-70. Bow and arrow hunting.**

A. It shall be lawful to hunt bear during the special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-50-71, may be in the possession of a properly licensed muzzleloading gun hunter when and where the early special archery bear season overlaps the early special muzzleloading bear season.

C. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

D. It shall be unlawful to use dogs when hunting with bow and arrow from the second Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

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William, Pulaski (south of Interstate 81), Richmond, Roanoke (south of Interstate 81), Smyth (south of Interstate 81), Southampton, Spotsylvania, Stafford, Surry, Sussex, Washington (south of Interstate 81), Westmoreland, Wythe (south of Interstate 81), and York, and in the cities of Hampton, Newport News and Norfolk, ~~from the second Saturday in August through the last Saturday in September.~~

B. It shall be lawful to chase black bear with dogs, without capturing or taking, ~~from the Saturday prior to the third Monday in November [ through the Saturday prior to the first Monday in December~~ and for 12 consecutive hunting days following ], both dates inclusive, in the counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Essex, Gloucester, Greenville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, and Mathews, Mecklenburg, from the first Monday in December for five consecutive hunting days following, both dates inclusive Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

C. It shall be lawful to chase black bears with dogs, without capturing or taking, in the counties of Brunswick, Greenville, Lunenburg, and Mecklenburg from the first Saturday in September through the third Saturday in September, both dates inclusive.

↯ D. It shall be unlawful to have in possession a firearm, bow, crossbow or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having a firearm, bow, crossbow or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R13-3719; Filed July 24, 2013, 10:04 a.m.

## Final Regulation

Title of Regulation: **4VAC15-70. Game: Bobcat (amending 4VAC15-70-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendment updates the delineation of the border in one county between where the use of dogs is and is not allowed to hunt bobcat during deer season.*

## 4VAC15-70-40. Use of dogs in hunting bobcats during deer season in certain counties and national forests.

It shall be unlawful to use dogs for the hunting of bobcats during the open season for hunting deer in the counties of Alleghany, Amherst (west of ~~U.S. Route 29~~) Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the town of Amherst continuing north on U.S. 29 to the Tye River), Augusta, Bath, Bedford, Botetourt, Campbell (west of Norfolk Southern Railroad), Clarke, Frederick, Highland, Nelson (west of Route 151), Page, Pittsylvania (west of Norfolk Southern Railroad), Rockbridge, Rockingham, Shenandoah and Warren, and within the boundaries of the national forests.

VA.R. Doc. No. R13-3720; Filed July 24, 2013, 3:17 a.m.

## Final Regulation

Title of Regulation: **4VAC15-90. Game: Deer (amending 4VAC15-90-10, 4VAC15-90-23, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-85, 4VAC15-90-90, 4VAC15-90-91, 4VAC15-90-231, 4VAC15-90-241, 4VAC15-90-260, 4VAC15-90-293; adding 4VAC15-90-89, 4VAC15-90-294; repealing 4VAC15-90-20, 4VAC15-90-21, 4VAC15-90-22, 4VAC15-90-30).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendments (i) adjust, by locality or other geographic or property divisions, the season schedules, bag limits, limits for deer of either sex, or antler point restrictions for general firearms, muzzleloading firearms, or archery deer hunting seasons; (ii) adjust areas where deer hunting with dogs is allowed; (iii) allow apprentice hunting license holders to hunt on the youth deer hunting day; (iv) adjust deer disease management requirements; (v) restrict the importation or movement of cervid carcasses or parts and the movement of such parts from areas designated for disease management; (vi) restrict the transport and possession of juvenile and adult cervids for the purpose of rehabilitation; and (vii) adjust requirements for checking elk that are killed.*

## 4VAC15-90-10. Open season; generally.

~~Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to hunt deer from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive.~~

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

<u>Locality</u>	<u>Season</u>		
<u>Accomack County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Bath County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Albemarle County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Bedford County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Alleghany County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Bland County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Amelia County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Botetourt County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Brunswick County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Amherst County (east of Business U.S. 29, as defined above)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Buchanan County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Appomattox County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Buckingham County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Arlington County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Campbell County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Arlington County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>	<u>Caroline County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Augusta County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Carroll County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
		<u>Charles City County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>Charlotte County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>Chesapeake (City of)</u>	<u>October 1 through November 30</u>
		<u>Chesterfield County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>

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<u>Clarke County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Floyd County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>
<u>Craig County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Fluvanna County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Culpeper County (except Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Franklin County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>
<u>Culpeper County (Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Frederick County (non-national forest lands)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Cumberland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Frederick County (national forest lands)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Dickenson County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Giles County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Dinwiddie County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Gloucester County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Essex County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Goochland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Fairfax County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Grayson County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Fairfax County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>	<u>Greene County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Fauquier County (except Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Greensville County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Fauquier County (Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Halifax County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>Hanover County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>Henrico County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>

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<u>Henry County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>	<u>Madison County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Highland County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Mathews County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Isle of Wight County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Mecklenburg County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>James City County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Middlesex County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>King and Queen County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Montgomery County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>King George County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Nelson County (west of Route 151)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>King William County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Nelson County (east of Route 151)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Lancaster County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>New Kent County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Lee County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Northampton County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Loudoun County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Northumberland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Loudoun County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>	<u>Nottoway County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Louisa County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Orange County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Lunenburg County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Page County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
		<u>Patrick County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>

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<u>Pittsylvania County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Rockingham County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Powhatan County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Russell County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Prince Edward County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Scott County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Prince George County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Shenandoah County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Prince William County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Smyth County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Prince William County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>	<u>Southampton County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Spotsylvania County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)</u>	<u>Saturday prior to the second Monday in November through the first Saturday in January</u>	<u>Stafford County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Rappahannock County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Suffolk (City of) (east of Dismal Swamp Line)</u>	<u>October 1 through November 30</u>
<u>Richmond County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Suffolk (City of) (west of Dismal Swamp Line)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Roanoke County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Surry County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Rockbridge County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Sussex County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>Tazewell County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
		<u>Virginia Beach (City of)</u>	<u>October 1 through November 30</u>

<u>Warren County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Washington County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Westmoreland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Wise County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Wythe County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>York County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>

B. Except as provided in subsection A of this section, east of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city or town that allows deer hunting.

C. Except as provided in subsection A of this section, west of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November and for 12 consecutive hunting days following within the incorporated limits of any city or town that allows deer hunting.

**4VAC15-90-20. Two-week open season; cities, towns, and counties west of Blue Ridge Mountains and certain cities, towns, and counties or parts thereof east of Blue Ridge Mountains. (Repealed.)**

~~It shall be lawful to hunt deer on the Saturday prior to the third Monday in November and for 12 consecutive hunting days following in the cities, towns and counties west of the Blue Ridge Mountains (except Clarke and Floyd counties and on non-national forest lands in Frederick County, and on the Radford Army Ammunition Plant in Pulaski County), and in the counties (including cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), Nelson (west of Route 151), and on the Chester F. Phelps Wildlife Management Area.~~

**~~4VAC15-90-21. Four-week open season; certain cities, towns, and counties or parts thereof. (Repealed.)~~**

~~It shall be lawful to hunt deer on the Saturday prior to the third Monday in November and for 24 consecutive hunting days following in the counties (including the cities and towns within) of Floyd, Franklin, Henry, and Patrick.~~

**~~4VAC15-90-22. Special late antlerless only open season; Fairfax, Fauquier, Loudoun, and Prince William counties. (Repealed.)~~**

~~It shall be lawful to hunt antlerless deer from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, in Fairfax, Fauquier, Loudoun and Prince William counties, except on department-owned lands.~~

**4VAC15-90-23. Youth and apprentice hunter deer hunting day.**

It shall be lawful for deer hunters 15 years of age and under and holders of an apprentice hunting license, when in compliance with all applicable laws and license requirements, to hunt deer on the last Saturday in September when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Deer of either-sex may be taken on this special youth deer hunting day. Adult hunters accompanying youth or apprentice deer hunters on this day may not carry or discharge weapons. Blaze orange is required for all persons hunting any species or any person accompanying a hunter on this day unless otherwise exempted by state law. Deer hunting with dogs is prohibited, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

**~~4VAC15-90-30. Open season; cities of Virginia Beach, Chesapeake and Suffolk east of Dismal Swamp Line. (Repealed.)~~**

~~It shall be lawful to hunt deer from October 1 through November 30, both dates inclusive, in the cities of Virginia Beach, Chesapeake, and Suffolk east of the Dismal Swamp Line.~~

**4VAC15-90-70. Bow and arrow hunting.**

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the Monday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29) Business U.S. 29 from the James River to its intersection with

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U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, ~~Campbell (west of Norfolk Southern Railroad)~~, Franklin, Henry, Nelson (west of Route 151), Patrick and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp ~~line~~) Line, and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

G. For the purpose of the application of subsections A through I to this section, the phrase "bow and arrow" includes crossbows.

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with a bow and arrow from the ~~first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, in Loudoun and Prince William counties, except on department owned lands~~

Monday following the last Saturday in March through the last Saturday in April, both dates inclusive, in Arlington, Fairfax, Loudoun, and Prince William counties (including the cities and towns within).

## **4VAC15-90-80. Muzzleloading gun hunting.**

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 18 consecutive hunting days immediately prior to and inclusive of the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of ~~U.S. Route 29~~) Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, Bedford, ~~Campbell (west of Norfolk Southern Railroad)~~, Franklin, Henry, Nelson (west of Route 151), Patrick and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp ~~line~~) Line, and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands and Philpott Reservoir.
- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Carroll, Frederick, Grayson, Montgomery, Roanoke, and Warren counties.
- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Botetourt, Frederick, Grayson, Page, Rockingham, Scott, Shenandoah, Warren, and on national forest and department-owned lands in Augusta, Bath,



Highland, and Rockbridge counties and on Grayson Highlands State Park and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below:

- Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of ~~U.S. Route 29~~ Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), ~~Campbell (west of Norfolk Southern Railroad)~~, Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Roanoke and Warren counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp ~~line~~ Line), and Virginia Beach.

- Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Dickenson (north of Route 83), Highland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in ~~Alleghany~~, Amherst, Bedford, Botetourt, Frederick, Grayson, Nelson, Page, Rockingham, Shenandoah, and Warren counties, and on national forest and department-owned lands in ~~Augusta, Bath, Highland~~, and Rockbridge counties and on private lands west of Routes 613 and 731 in Rockingham County and Grayson Highlands State Park.

- Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

**4VAC15-90-85. Elk hunting.**

A. Closed season. There shall be a continuous closed season for elk (*Cervus elaphus*) hunting in Buchanan, Dickenson, [~~Lee, Russell, Scott, Tazewell~~] and Wise counties.

B. Open season. Except as otherwise provided by this chapter, it shall be lawful to hunt elk of either sex during (i) the general firearms deer seasons (as prescribed by 4VAC15-90-10, ~~4VAC15-90-20, 4VAC15-90-21, 4VAC15-90-22, and 4VAC15-90-23, and 4VAC15-90-30~~), (ii) the special archery seasons (as prescribed by 4VAC15-90-70), and (iii) the special muzzleloading seasons (as prescribed by 4VAC15-90-80) with bag limits as prescribed in 4VAC15-90-90.

C. Validating tags and checking elk by licensee or permittee. Upon killing an elk, any licensed or permitted hunter shall validate a tag, bonus deer permit, or special permit and check the elk in accordance with 4VAC15-90-231. At the time of checking, the hunter must call ~~1-804-367-1258~~ the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

D. Checking elk by persons exempt from license requirements or holding a license authorization number. Upon killing an elk, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall check the elk in accordance with 4VAC15-90-241. At the time of checking, the hunter must call ~~1-804-367-1258~~ the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

**4VAC15-90-89. Earn a buck (EAB).**

For the purposes of this section, the term "license year" defines the period between July 1 and June 30 of the following year.

Arlington County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Arlington County prior to taking at least two antlerless deer in Arlington County, and it shall be unlawful to take a third antlered deer in Arlington County prior to taking at least three antlerless deer in Arlington County.

Bedford County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Bedford County prior to taking at least one antlerless deer on private lands in Bedford County, and it shall be unlawful to take a third antlered deer on private lands in Bedford County prior

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to taking at least two antlerless deer on private lands in Bedford County.

Clarke County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Clarke County prior to taking at least one antlerless deer on private lands in Clarke County.

Fairfax County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Fairfax County prior to taking at least two antlerless deer in Fairfax County, and it shall be unlawful to take a third antlered deer in Fairfax County prior to taking at least three antlerless deer in Fairfax County.

Frederick County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Frederick County prior to taking at least one antlerless deer on private lands in Frederick County.

Loudoun County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Loudoun County prior to taking at least two antlerless deer in Loudoun County, and it shall be unlawful to take a third antlered deer in Loudoun County prior to taking at least three antlerless deer in Loudoun County.

Prince William County except on Department of Defense lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least two antlerless deer in Prince William County (except on Department of Defense lands), and it shall be unlawful to take a third antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least three antlerless deer in Prince William County (except on Department of Defense lands).

Roanoke County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Roanoke County prior to taking at least one antlerless deer on private lands in Roanoke County.

Warren County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Warren County prior to taking at least one antlerless deer on private lands in Warren County.

## **4VAC15-90-90. Bag limit, bonus deer permits and special antlerless provision for youth hunters and earn a buck.**

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson counties) is two per day (except for the counties of, including the cities and towns within, Arlington, Fairfax, Loudoun, and Prince William where the daily bag limit is unlimited), six per license year, three of which must be antlerless.

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties is one per day (except for private lands in the counties including the cities and towns within Clarke, Frederick, Roanoke, Shenandoah, and Warren where the daily bag limit is two per day), five per license year, three of which must be antlerless. Only one antlered buck taken in the county of Alleghany, Augusta, Bath, Highland, Shenandoah, Rockbridge, or Rockingham per license year may have less than four antler points one inch or longer on one side of the antlers.

C. Except as noted in subsection E below, antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and under, including those exempt from purchasing a hunting license, when in compliance with all applicable laws and license requirements, may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties that have at least one either-sex deer hunting day during the general firearms deer season.

~~F. Earn a buck (EAB) areas include all private lands in the counties (including private lands in the cities and towns within) of Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William, and Roanoke. In EAB areas at least one antlerless deer must be taken on private lands in an EAB area before the second antlered deer of the license year may be taken on private lands in an EAB area. Furthermore, at least two antlerless deer must have been taken on private lands in an EAB area before the third antlered deer of the license year may be taken on private lands in an EAB area.~~

## **4VAC15-90-91. General firearms season either-sex deer hunting days.**

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

Albemarle County: full season.

Alleghany County: the second Saturday and the last hunting day.

-National forest lands: the last hunting day.

Amelia County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ the second and third Saturdays and the last 12 hunting days.

-Amelia WMA: the second and third Saturdays and the last six hunting days.

Amherst County (east of ~~U.S. Route 29~~) Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): the second, third, and fourth Saturdays and the last 24 hunting days.

Amherst County (west of ~~U.S. Route 29~~) Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

-National forest lands: the last hunting day.

Appomattox County: the second and third Saturdays and the last 12 hunting days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Arlington County: full season.

Augusta County: the second Saturday and the last six hunting days.

-National forest and department-owned lands: the last hunting day.

Bath County: the second Saturday and the last hunting day.

-National forest and department-owned lands: the last hunting day.

Bedford County: full season.

-National forest lands: the last hunting day.

Bland County: ~~the second Saturday and the last six hunting days~~ the second Saturday and the last two hunting days.

-National forest lands: the second Saturday and the last hunting day.

Botetourt County: full season.

-National forest lands: the last hunting day.

Brunswick County: the second and third Saturdays and the last 12 hunting days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last 12 hunting days.

-Horsepen Lake WMA: the second and third Saturdays and the last six hunting days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

~~Campbell County (east of Norfolk Southern Railroad): the second, third, and fourth Saturdays and the last 24 hunting days.~~

Campbell County (~~west of Norfolk Southern Railroad~~): [ ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days ].

Caroline County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

-Mattaponi WMA: the second and third Saturdays and the last six hunting days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Charles City County: full season.

-Chickahominy WMA: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the second Saturday after Thanksgiving.

Charlotte County: the second and third Saturdays and the last 12 hunting days.

Chesapeake (City of): full season.

Chesterfield County: ~~full season~~ the second and third Saturdays and the last 12 hunting days.

Clarke County: full season.

Craig County: full season.

-National forest lands: the second Saturday and the last hunting day.

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday and the last hunting day.

Cumberland County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ the second and third Saturdays and the last 12 hunting days.

-Cumberland State Forest: the second and third Saturdays.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last 12 hunting days.

Essex County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

Fairfax County: full season (restricted to certain parcels of land by special permit).

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Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last hunting day.

-Chester F. Phelps WMA: the second Saturday and the last hunting day.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last 12 hunting days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: the second Saturday and the last six hunting days.

Frederick County: full season

-National forest lands: the last hunting day.

Giles County: full season.

-National forest lands: the second Saturday and the last hunting day.

Gloucester County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

Goochland County: the second, third, and fourth Saturdays and the last 24 hunting days.

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Greene County: full season.

Greensville County: full season.

Halifax County: full season.

Hanover County: full season.

Henrico County: full season.

Henry County: ~~full season~~ the second and third Saturdays and the last 12 hunting days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: the second Saturday and the last six hunting days.

Highland County: the second Saturday and the last hunting day.

-National forest and department-owned lands: the last hunting day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

King George County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

King William County: the second, third, and fourth Saturdays and the last 24 hunting days.

Lancaster County: full season.

Lee County: the second Saturday and the last two hunting days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second, third, and fourth Saturdays and the last 24 hunting days.

Lunenburg County: the second and third Saturdays and the last 12 hunting days.

Madison County: full season.

-Rapidan WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Mathews County: the second, third, and fourth Saturdays and last 24 hunting days.

Mecklenburg County: the second and third Saturdays and the last 12 hunting days.

-Dick Cross WMA: the second and third Saturdays and the last six hunting days.

Middlesex County: the second, third, and fourth Saturdays and last 24 hunting days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last hunting day.

Nelson County (east of Route 151): the second, third, and fourth Saturdays and the last 24 hunting days.

-James River WMA: the second Saturday and the last six hunting days.

Nelson County (west of Route 151): full season.

-National forest lands: the last hunting day.

New Kent County: full season.

Northampton County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

Northumberland County: full season.

Nottoway County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ the second and third Saturdays and the last 12 hunting days.

Orange County: full season.

Page County: the second Saturday and the last two hunting days.

-National forest lands: the last hunting day.

Patrick County: ~~full season~~ the second and third Saturdays and the last 12 hunting days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

Pittsylvania County: the second, third, and fourth Saturdays and the last 24 hunting days.

-White Oak Mountain WMA: the second Saturday and the last hunting day.

Powhatan County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ the second and third Saturdays and the last 12 hunting days.

-Powhatan WMA: the second and third Saturdays and the last six hunting days.

Prince Edward County: the second and third Saturdays and the last 12 hunting days.

-Briery Creek WMA: the second and third Saturdays and the last six hunting days.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

-National forest lands: the second Saturday and the last hunting day.

Rappahannock County: full season.

Richmond County: full season.

Roanoke County: full season.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Rockbridge County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: the last hunting day.

Rockingham County: the second Saturday and the last six hunting days.

-National forest lands and private lands west of Routes 613 and 731: the last hunting day.

Russell County: the second Saturday and the last two hunting days.

-Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Scott County: the second Saturday and the last six hunting days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: the last hunting day.

Smyth County: the second Saturday and the last six hunting days.

-National forest lands, Clinch Mountain WMA, and Hungry Mother State Park: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Southampton County: full season.

Spotsylvania County: ~~full season~~ the second, third, and fourth Saturdays and the last 24 hunting days.

Stafford County: full season.

Suffolk (City of): full season.

Surry County: full season.

-Carlisle Tract of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

Tazewell County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Virginia Beach (City of): full season.

Warren County: full season.

-National forest lands: the last hunting day.

Washington County: the second Saturday and the last six hunting days.

-National forest lands, Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Westmoreland County: full season.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

-National forest lands and Big Survey WMA: the second Saturday and the last hunting day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

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## **4VAC15-90-231. Validating tags and checking deer by licensee or permittee.**

A. Any person killing a deer shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting bear, deer, and turkey, bonus deer permit, or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a deer tag from any special license for hunting bear, deer, and turkey, bonus deer permit, or special permit prior to the killing of a deer. A deer tag that is mistakenly validated (notched) prior to the killing of a deer must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a deer and validating (notching) a license tag, bonus deer permit or special permit, as provided above, the licensee or permittee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag, bonus deer permit or special permit to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-22 and 4VAC15-90-70) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass will be given a game check card furnished by the department or a confirmation number from the automated reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

C. It shall be unlawful for any person to destroy the identity of the sex of any deer killed unless and until the license tag,

bonus deer permit or special permit is validated (notched) and checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer found in the possession of any person without a validated (notched) license tag or documentation that the deer has been checked (via a big game check station or the automated harvest reporting system) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

D. Upon killing a deer within an area designated by the department for deer disease management and on days designated by the department, the licensee or permittee shall present the carcass, on the day of kill, at a location designated by the department for the purposes of disease surveillance or biological monitoring.

## **4VAC15-90-241. Checking deer by persons exempt from license requirement or holding a license authorization number.**

A. Upon killing a deer, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E of the Code of Virginia, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-22 and 4VAC15-90-70) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a confirmation number from the automated reporting system. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be

transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

B. It shall be unlawful for any person to destroy the identity (sex) of any deer killed until the deer is checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer that has not been checked (via a big game check station or the automated harvest reporting system) as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

C. Upon killing a deer within an area designated by the department for deer disease management and on days designated by the department, the hunter shall present the carcass, on the same day the deer was killed, at a location designated by the department for the purposes of deer disease surveillance or biological monitoring.

**4VAC15-90-260. Hunting with dogs prohibited in certain counties and areas.**

A. Generally. It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of ~~U.S. Route 29~~ Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Campbell (west of Norfolk Southern Railroad, and in the City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. Special provision for Greene and Madison counties. It shall be unlawful to hunt deer with dogs during the first 12 hunting days in the counties of Greene and Madison, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

**4VAC15-90-293. Chronic Wasting Disease deer carcass importation movement restrictions.**

A. For the purposes of this section and in 4VAC15-40-285 and 4VAC15-90-294:

"Cervid" means any member of the deer family Cervidae, including but not limited to white-tailed deer, fallow deer, sika deer, elk, and reindeer.

~~A.~~ B. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from any area designated by the department as a carcass-restriction zone in or adjacent to a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer, except that the following carcass parts may be imported and possessed:

1. Boned-out meat that is cut and wrapped;
2. Quarters or other portions of meat with no part of the spinal column or skull attached;
3. Hides or capes with no skull attached;
4. Clean (no meat or tissue attached) skull plates with antlers attached;
5. Antlers (with no meat or tissue attached);
6. Upper canine teeth (buglers, whistlers, or ivories); and
7. Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who killed or owned the animal.

~~B.~~ C. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

D. No person shall transport any carcass or part of a carcass of any cervid out of any area designated by the department as a disease containment area, except that the carcass parts enumerated in subsection B of this section may be transported, and carcasses or parts may be transported directly to locations designated by the department, provided that such carcasses or parts are transported without unnecessary delay and secured within a vehicle or vehicles during transit. Provisions of this section shall not apply to employees of the department or another government agency working in an official disease investigation capacity.

**4VAC15-90-294. Rehabilitation of cervids.**

A. For the purposes of this section:

"Juvenile" means any cervid less than one year of age on December 31 of the current calendar year.

"Adult" means any cervid greater than one year of age on December 31 of the current calendar year.

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B. No person permitted by the department to rehabilitate cervids may transport, possess, rehabilitate, or release adult cervids.

C. Juvenile cervids requiring continued rehabilitation beyond December 31 of the current calendar year shall not be transported, possessed, released, or rehabilitated without written authorization from the department.

D. Cervids that originate within an area designated by the department for disease management shall not be transported or possessed for the purposes of rehabilitation. If such a cervid is brought to a rehabilitator permitted by the department, the permittee shall hold the cervid in isolation and immediately notify the department.

E. Cervids from any county (including the cities and towns therein) containing an area designated by the department for cervid disease management may be rehabilitated and released in the county of origin only if the cervid originated from a portion of the county outside the disease management area.

VA.R. Doc. No. R13-3721; Filed July 24, 2013, 6:48 a.m.

## Final Regulation

Title of Regulation: 4VAC15-110. Game: Fox (repealing 4VAC15-110-75).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendment repeals the existing section governing live trapping of fox for foxhound training preserves. The conditions for a permit to operate a foxhound training preserve are established in 4VAC15-290-160.*

**~~4VAC15-110-75. Foxhound training preserves; live-trapping for release. (Repealed.)~~**

~~It shall be lawful for any foxhound training preserve permittee or those licensed trappers designated in writing by the permittee to live trap and transport red (*Vulpes vulpes*) and gray (*Urocyon cinereoargenteus*) foxes from September 1 through the last day of February, both dates inclusive, only for the purpose of stocking foxhound training preserves covered by permits authorized by the board and issued by the department. For the purpose of this section, foxes may be live-trapped on private land with landowner permission or on public lands designated by the department. For the purpose of this section, foxes may be live-trapped and transported within the Commonwealth of Virginia.~~

VA.R. Doc. No. R13-3722; Filed July 24, 2013, 4:45 a.m.

## Final Regulation

Title of Regulation: 4VAC15-170. Game: Otter (amending 4VAC15-170-20).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendment increases the season bag limit in all counties west of the Blue Ridge Mountains from two to four otters per trapper.*

**4VAC15-170-20. Open season for trapping; season bag limit west of the Blue Ridge Mountains.**

A. It shall be lawful to trap otter from December 1 through the last day of February, both dates inclusive.

B. The season bag limit for trapping otter shall be ~~two~~ four per trapper in counties west of the Blue Ridge Mountains.

VA.R. Doc. No. R13-3723; Filed July 24, 2013, 4:56 a.m.

## Final Regulation

Title of Regulation: 4VAC15-230. Game: Squirrel (amending 4VAC15-230-20).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendment extends the squirrel hunting season through the end of February.*

**4VAC15-230-20. Gray and red squirrel. Season; generally.**

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to hunt squirrel from the first Saturday in September through ~~January 31~~ the last day in February, both dates inclusive.

VA.R. Doc. No. R13-3724; Filed July 24, 2013, 5:07 a.m.

## Final Regulation

Title of Regulation: 4VAC15-240. Game: Turkey (amending 4VAC15-240-40, 4VAC15-240-51, 4VAC15-240-60).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.



Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The amendments (i) allow apprentice hunting license holders to hunt on youth spring and fall turkey hunting days and (ii) eliminate a provision pertaining to physical disabilities that was rendered obsolete by the establishment of hunting with crossbows.*

**4VAC15-240-40. Open season; spring season for bearded turkeys.**

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys from the second Saturday in April and for 30 consecutive hunting days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time during the first 19 hunting days and from 1/2 hour before sunrise to sunset during the last 12 hunting days of the spring season.

B. Turkey hunters 15 years of age and under and holders of an apprentice hunting license may hunt on the first Saturday in April from 1/2 hour before sunrise to sunset, when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or an adult that is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters or apprentice license holders on this day may assist with calling but they shall not carry or discharge weapons.

C. Bearded turkeys may be hunted by calling.

D. It shall be unlawful to use dogs or organized drives for the purpose of hunting.

E. It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

**4VAC15-240-51. Youth and apprentice hunter fall turkey hunt hunting day.**

In counties, cities, and areas with a fall turkey season, hunters 15 years of age and under and holders of an apprentice hunting license may hunt turkey on the third Saturday in October when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters or apprentice license holders on this day may assist with calling turkey but they shall not carry or discharge weapons.

**4VAC15-240-60. Bow and arrow hunting.**

A. Season. It shall be lawful to hunt turkey with bow and arrow in those counties and areas open to fall turkey hunting from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with bow and arrow shall be the same as permitted during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow during special archery season.

D. Requirements for bow and arrow. Arrows used for hunting turkey must have a minimum width head of 7/8 of an inch, and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

E. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

~~F. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4VAC15-40-20 B, to hunt turkey subject to the provisions of subsections A through E of this section. For the purpose of the application of subsections A through E to this subsection the phrase "bow and arrow" includes crossbow.~~

VA.R. Doc. No. R13-3725; Filed July 24, 2013, 5:20 a.m.

**Final Regulation**

Title of Regulation: **4VAC15-270. Game: Firearms (amending 4VAC15-270-10, 4VAC15-270-90).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The amendment provides a model ordinance provision that counties and cities may use to allow hunting of coyotes with rifles larger than .22 caliber rim fire between March 1 and August 31.*

**4VAC15-270-10. Size rifles for hunting bear and deer.**

It shall be unlawful to use a rifle of a ~~calibre~~ caliber less than 23 for the hunting or killing of bear and deer. [ ~~Rifles must use an explosive propellant; pneumatic (air or gas) rifles are prohibited.~~ ]

**4VAC15-270-90. Model ordinances related to hunting with firearms for counties and cities.**

Per the provisions of § 29.1-528 A of the Code of Virginia, the following model ordinances related to hunting with firearms may be adopted by counties and cities. In accordance with § 29.1-528 B of the Code of Virginia, no such ordinance shall be enforceable unless the governing body of the locality

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notifies the director by registered mail prior to May 1 of the year in which the ordinance is to take effect.

Model Ordinance 1:

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire.

Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 2:

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire, except rifles of a larger caliber may be used for hunting groundhogs and coyotes between March 1 - August 31. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 3:

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire, except rifles of a larger caliber may be used to hunt from a stand elevated at least 10 feet from the ground. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 4:

Muzzleloading rifles may only be used to hunt from a stand elevated at least 10 feet from the ground. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 5:

Muzzleloading rifles firing a single projectile may not be used to hunt between April 1 - May 31. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 6:

It shall be unlawful to hunt with shotguns loaded with slugs. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 7:

It shall be unlawful to engage in hunting with a firearm within the right-of-way of any primary or secondary highway. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 8:

It shall be unlawful to engage in hunting with a firearm within 100 yards of any primary or secondary highway. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

VA.R. Doc. No. R13-3726; Filed July 24, 2013, 8:31 a.m.

## Final Regulation

Title of Regulation: **4VAC15-290. Game: Permits (amending 4VAC15-290-60; adding 4VAC15-290-150, 4VAC15-290-160).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The amendments establish (i) standards under which elementary and secondary school teachers possess and display wildlife without a permit to exhibit wildlife and (ii) requirements for a permit to operate a foxhound training preserve.*

### **4VAC15-290-60. Holding wild animals for exhibition purposes.**

A. Where an exhibit is educational and purposeful in nature, wild animals may be exhibited with a permit provided for in § 29.1-417 of the Code of Virginia, under such restrictions and conditions as the board may prescribe.

B. Elementary or secondary school teachers may possess and display wildlife for educational purposes without a permit to exhibit wildlife, provided that:

1. Notification of the display is made to the department by mail to Permits Section, VDGIF, P.O. Box 11104, Richmond, VA 23230-1104. This notification shall be made within 48 hours of the beginning of the display, shall be updated any time that additional wildlife is added to the display, and shall include:

- a. Number and species of wildlife held for display;
- b. Physical address of the location of the display; and
- c. Duration for which the display is intended to be maintained.

2. Species allowed to be possessed and displayed pursuant to this subsection shall be limited to those species included in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference in 4VAC15-20. In addition, in no case shall the following species be possessed and displayed without a permit to exhibit wildlife:

- a. Those species [ ~~for which a permit is required by 4VAC15-30-40~~ included on the list contained in 4VAC15-30-40, whether of native or exotic origin ];
- b. Fur-bearing animals as defined in § 29.1-100 of the Code of Virginia.
- c. Those species defined as nonnative or exotic animals pursuant to 4VAC15-20-50.
- d. [ Migratory birds protected by the federal Migratory Bird Treaty Act (16 USC §§ 703-711).
- ~~e.] Federal and state threatened and endangered species pursuant to 4VAC15-20-130.~~

[ ~~e. f.] Nuisance species designated by § 29.1-100 of the Code of Virginia or 4VAC15-20-160, or nonindigenous~~

aquatic nuisance species designated by § 29.1-571 of the Code of Virginia or 4VAC15-20-210.

[ ~~f. g.~~ ] Predatory or undesirable animals or birds for which a permit is required by 4VAC15-30-20.

3. Any person bitten by mammalian wildlife must report the injury to the local health department. The offending animal must be segregated and housed separately from other animals and humans until the health department is notified.

4. Wildlife must be confined under sanitary and humane conditions that are appropriate for the species in captivity. All cages and enclosures shall be locked at all times when wildlife is not under the immediate control or direct supervision of the handler to prevent wildlife escape and unauthorized contact with individuals.

5. No wildlife held, possessed, or displayed may be released for any purpose without the written authorization of the department.

6. The department shall be notified within 24 hours of an instance of wildlife sickness or disease or in the event of an escape.

7. Teachers possessing and displaying wildlife for educational purposes in accordance with this section shall comply with all other local, state, and federal laws and regulations pertaining to species possessed and displayed.

#### **4VAC15-290-150. (Reserved.)**

#### **4VAC15-290-160. Foxhound training preserves.**

A. A permit shall be required for the operation of a foxhound training preserve in the Commonwealth. The director or his designee may issue, deny, renew, modify, suspend, and revoke permits for the operation of foxhound training preserves. Permit requirements shall include, but not be limited to:

##### 1. Application requirements, including:

a. Operator information, including name, date of birth, address, phone number, and email address, as well as an indication as to whether the operator has previously been convicted of any federal or state wildlife law or regulation violation and, if so, a description of such conviction.

b. Preserve information, including whether the preserve is public or private, the name and location of the preserve, the names and addresses of adjacent landowners, and the mailing address and phone number of the preserve, if different from the operator.

c. Evidence of the size of the preserve. A 7-1/2 minute 1:24,000 topographic map or aerial image indicating the fenced area shall be provided. For preserves under 150 acres, or where determined necessary by the department to determine compliance with minimum acreage requirements, the department shall further require a plat of legible scale by a certified land surveyor that shows

ties to property lines (submeter) and is produced using a differential global positioning system capable of producing submeter accuracy positioning, which shall be reviewed by the department and must indicate that the fenced area is 100 acres to an accuracy level of plus or minus one acre.

d. An application fee of \$50.

e. A certification statement by the operator attesting to the accuracy of the application and agreeing to notification of the department of any change within 30 days.

2. Provisions establishing a permit term of one year, after which permits may be renewed in accordance with the department's permit renewal procedures.

3. Acreage requirements specifying that each preserve must be at least 100 contiguous acres completely fenced. Facilities that consist of less than 100 contiguous acres permitted prior to [ ~~(insert effective date of this regulation)~~ August 15, 2013, ] may remain permitted so long as permit coverage is continuously maintained. The map or aerial image of the preserve boundaries must be on file with the department, and must be updated if any landowner changes, or if boundaries are altered.

4. Fencing requirements sufficient to prevent foxes and hounds from entering or escaping the enclosure. These requirements may include requirements for double strands of barbed wire at the top and electric wire at the bottom of the perimeter fencing and at all gates around the preserve, or other such fencing as deemed necessary. Such requirements shall also require rounded fence corners within the enclosure or the use of interior fencing to provide dog-proof escape areas at nonrounded fence corners.

5. Habitat and escape cover requirements, including adequate natural cover within the enclosure and at least one man-made dog-proof escape structure per 20 acres, unless greater escape cover is deemed necessary based on an inspection of the enclosure. Each escape structure or device must offer foxes effective refuge from dogs at all times and shall be appropriately distributed throughout the enclosure.

6. Requirements that all persons participating in the training of foxhounds in a preserve, unless specifically exempted by law, shall have a valid resident or nonresident Virginia hunting license, or a nonresident license to hunt exclusively in foxhound training preserves. Participants are not required to have a hunting license when participating in a dog field trial authorized by the department.

a. Hunting of any species other than foxes is prohibited within the preserve unless otherwise provided for by the department.

b. A dog field trial permit shall be required for all field trials.

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7. Requirements for training and field trials held within the preserve, including:

a. Hound density restrictions specifying the maximum number of dogs that may be trained or participate in field trials in the enclosure at any one time. This maximum hound density shall not exceed one dog per two acres of preserve. When deemed necessary, more restrictive hound densities may be required, based on available escape cover and past history of hound-related mortality events.

b. Limits on the number of days per week during which training or field trials may occur. Training or field trials with foxhound densities exceeding one dog per 10 acres shall not be permitted for two days prior to and two days after any field trial event and shall be limited to a maximum of five days per week.

c. All dogs training or participating in field trial events within the preserve shall be up to date on their rabies vaccinations. Proof of rabies vaccination status shall consist of a current rabies certificate signed by a licensed veterinarian.

d. No field trial event shall provide for a cash or monetary prize to the participants.

8. Provisions regarding the stocking of the enclosure, including:

a. The purchase of foxes for the purposes of stocking a preserve shall be prohibited. However, the time and expenses of trappers supplying foxes may be reimbursed, so long as a written receipt detailing the amount paid and the specific expenses being reimbursed is prepared and given to the trapper, with a copy retained by the preserve operator. Receipts shall be retained by both parties for two years and are subject to inspection by the department at any time.

b. Only wild, live-trapped red (*Vulpes vulpes*) and gray (*Urocyon cinereoargenteus*) foxes may be released into preserves. Foxes may only be trapped for stocking purposes within the Commonwealth. No importation of foxes from out of state is permitted nor may foxes be relocated from one preserve to another, except that foxes may be transported from acclimation training enclosures to another enclosure of the same operator. Release of coyotes into foxhound training preserves is prohibited.

c. Live-trapped wild foxes may be released only in preserves that are operating under a valid permit and are open to the public for foxhound training purposes.

d. Acclimation requirements providing a minimum of seven days for foxes to become familiar with available food and habitat resources within the enclosure prior to any dog training or field trial event and 14 days prior to any dog training at hound densities exceeding one dog per 10 acres.

e. All preserves shall provide the necessary habitat to meet the food, water, and cover requirements of wild foxes.

f. The department shall be notified of any fox mortality or observation of diseased foxes within the preserve. The department may require specific health management procedures as deemed necessary and may suspend the operation of the preserve or halt stocking at any time warranted. Inspection and treatment of foxes by a licensed veterinarian may be required at the operator's expense. In the event of disease outbreaks, costs associated with testing, depopulating, cleaning, and disinfecting shall be the sole expense of the operator.

9. Provisions to prevent the ingress of black bears and, as deemed appropriate, other wildlife into the enclosure, and procedures for reporting the ingress of bears into the enclosure and the removal of bears or other wildlife.

10. Recordkeeping and reporting requirements, including:

a. Maintenance of a registry of the names, addresses, and phone numbers of all hunters training hounds or participating in field trials, the dates hunted, and the number of dogs per hunt. A separate contact list with the complete address and telephone number for each hunter may be maintained in lieu of the contact information in the registry.

b. The development and submission of a report to the department that includes the number, species (red or gray), and source of all foxes trapped and stocked in the preserve, including the name and address of each trapper, the county of origin of each fox, and the capture and release dates of each fox. This report shall be submitted by March 15 of each year, and no permit shall be renewed if the report is not submitted.

c. All records shall be kept current and retained for a period of two years and are subject to inspection by the department at any time.

11. Provisions allowing for inspections of the enclosure and of the permittee's records by the department at the time of application, during annual inspections, or at any other time. The department may also conduct disease testing of transported foxes and wildlife within the enclosure at any time.

12. Such other conditions as may be determined appropriate by the department.

B. The director or his designee may grant variances to the requirements of subsection A of this section where it is determined by the department that the imposition of a requirement would impose an unreasonable burden on the operator and that the purposes of the requirement can be substantially fulfilled by alternative conditions. Any relief granted shall be the minimum necessary, documented in the operator's permit, and subject to review by the department at each permit renewal.

C. It shall be lawful for any foxhound training preserve permittee, and licensed trappers designated in writing by the permittee and approved by the department, to live-trap and transport red and gray foxes from September 1 through the last day of February, both dates inclusive, only for the purpose of stocking foxhound training preserves covered by permits issued pursuant to this section. For the purpose of this section, foxes may be live-trapped on private lands with landowner permission or on public lands designated by the department and transported within the Commonwealth, unless otherwise specifically prohibited. Trapping expenses may be reimbursed by the preserve owner as provided in this section; however, in no case shall the direct sale of foxes or payment on a per fox basis be permitted. Except as provided in this section, all trapping shall otherwise comply with laws and regulations governing trapping.

1. The preserve operator may designate in writing no more than 10 licensed trappers from whom foxes may be obtained. Any person convicted of violating any provision of state or federal hunting and trapping laws and regulations shall not be eligible to supply foxes to preserves for at least two years and up to five years following the most recent violation. In determining the appropriate length of restriction, the department shall take into account the nature and severity of the most recent violation and any past violation.

2. All live-trapped foxes must be taken by legal means and foxes transported or held for release shall be kept in safe, sanitary, and humane conditions with water and food available and with protection from the elements.

3. Foxes may be retained for no more than seven days following their capture, and all foxes must be transported to the preserve by the final day of the trapping season. Records shall be maintained by trappers as to the length of time that each fox is retained in their possession and shall be subject to inspection by the department at any time.

D. Failure to comply with the provisions of a permit or the requirements of this section or other applicable wildlife laws or regulations may result in modification, suspension, or revocation of the permit, or denial of a permit application.

V.A.R. Doc. No. R13-3727; Filed July 24, 2013, 8:11 a.m.

## **Final Regulation**

**Title of Regulation:** **4VAC15-340. Fish: Seines and Nets (adding 4VAC15-340-70, 4VAC15-340-80).**

**Statutory Authority:** §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Effective Date:** August 15, 2013.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendments allow the licensing of eel pots for the taking of American eels for personal use or commercial purposes in Back Bay and its natural tributaries and in the North Landing River and its tributaries.*

### **4VAC15-340-70. Eel pots for taking American eels for personal use.**

A. The director may issue, deny, modify, suspend, or revoke annual eel pot permits for American eels designated for personal use. Such permits shall authorize the taking of American eels for personal use only (not for sale) with eel pots from waters designated in this section. Such permits shall be valid so long as the harvest of eels in the Commonwealth is not prohibited by other state or federal law or regulation.

B. It shall be unlawful for a permit holder to possess elvers.

C. It shall be unlawful for permit holders fishing eel pots to take any species other than American eels.

D. It shall be unlawful to place, set, or fish any eel pot that has a mesh less than 1/2-inch by 1/2-inch and does not contain at least one unrestricted 4-inch by 4-inch escape panel of 1/2-inch by 1-inch mesh. Buoys of all pots set must be marked by permanent means with the permit holder's name, address, and phone number.

E. American eels may be taken with eel pots in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River and its natural tributaries from the North Carolina line to the Great Bridge locks.

F. It shall be unlawful for any permit holder to possess more than 50 eels daily. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the daily possession limit shall be for the boat or vessel and shall be equal to the number of permit holders on board multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any eel taken after the daily possession limit has been reached shall be returned to the water immediately. Possession of any quantity of eels that exceeds the daily possession limit described in this subsection shall be presumed to be for commercial purposes.

G. For the purposes of this section, the term "elver" shall mean any American eel of less than six inches in total length.

### **4VAC15-340-80. Eel pots for taking American eels for sale.**

A. The director may issue, deny, modify, suspend, or revoke annual eel pot permits designated for the sale of American eels. Such permits shall authorize the taking of American eels for sale, as specified, with eel pots from waters designated in this section. Such permits shall be valid so long as the harvest of American eels in the Commonwealth is not prohibited by other state or federal law or regulation. To be eligible, applicants must document harvest of at least one pound of American eels from Back Bay or North Landing River or

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their tributaries via reports submitted through the Virginia Marine Resources Commission Mandatory Harvest Reporting Program during the period January 1, 2007, to December 31, 2012, both dates inclusive. Applicants must document the reported harvest occurred while the applicant held a valid commercial fish pot or eel pot license issued by the Virginia Marine Resources Commission.

B. It shall be unlawful for permit holders to possess elvers.

C. It shall be unlawful for permit holders fishing eel pots to take any species other than American eels.

D. It shall be unlawful to place, set, or fish any eel pot that has a mesh less than 1/2-inch by 1/2-inch and does not contain at least one unrestricted 4-inch by 4-inch escape panel consisting of 1/2-inch by 1-inch mesh.

E. The permit holder's last name and Virginia Department of Game and Inland Fisheries American eel pot number must be permanently attached to buoys of all eel pots set. The maximum number of pots authorized per permit holder under this permit shall be 300.

F. American eels may be taken with eel pots in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and in North Landing River and its natural tributaries from the North Carolina line to the Great Bridge locks.

G. It shall be unlawful for any person to ship or otherwise transport any package, box, or other receptacle containing fish taken under an eel pot permit unless the same bears the permit holder's name and address.

H. Failure to comply with the daily harvest and sales reporting requirements as detailed in conditions of the permit shall be unlawful and may result in immediate permit revocation. It shall be the permit holder's responsibility to report "No Activity" when no activity occurs during a monthly reporting period.

I. For the purposes of this section, the term "elver" shall mean any American eel of less than six inches in total length.

VA.R. Doc. No. R13-3728; Filed July 24, 2013, 2:42 a.m.

## MARINE RESOURCES COMMISSION

### 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:** 4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-20, 4VAC20-900-25).

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

**Effective Date:** August 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](mailto:betty.warren@mrc.virginia.gov).

#### Summary:

*The amendments (i) define "Toms Cove Area," (ii) establish that from April 1 through May 31 any gill net licensed as over 600 feet and up to 1200 feet in length shall have a least one anchored end 800 feet from the mean low water line, and (iii) prohibit any gill net from being set from sunset to sunrise from June 1 through June 30 to account for variation in harvesting practices among user groups.*

#### 4VAC20-900-20. Definition.

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

"COLREGS Line" means the COLREGS Demarcation Line, as defined in the Code of Federal Regulations (33 CFR 80.510 Chesapeake Bay Entrance, VA).

"Horseshoe crab" means any crab of the species *Limulus polyphemus*.

"Land" or "landing" means to enter port with horseshoe crabs on board any boat or vessel, to begin offloading horseshoe crabs, or to offload horseshoe crabs.

"Toms Cove Area" means all waters of Toms Cove and Little Toms Cove located east of a line from the western most point of Assateague Point to the western most point of Fishing Point and extending to the mean low water line of Assateague Island.

#### 4VAC20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The commercial quota of horseshoe crab for 2013 shall be 172,828 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions, in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from

Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

E. It shall be unlawful for any person to harvest or land horseshoe crabs during any calendar year from waters east of the COLREGS line by any gear after 81,331 male horseshoe crabs have been landed and announced as such, and the following provisions shall also apply:

1. It shall be unlawful for any person to harvest or land any female horseshoe crabs from waters east of the COLREGS line.

2. It shall be unlawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by any gear, except for trawl or dredge gear.

F. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as described in 4VAC20-900-21 C, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-21 C and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.

2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-21 D, and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.

3. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel

more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

5. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license or a horseshoe crab bycatch permit to possess any horseshoe crabs.

6. It shall be unlawful for any person who possesses a horseshoe crab endorsement license or a horseshoe crab bycatch permit to harvest horseshoe crabs by gill net, except as described in this subdivision.

a. Horseshoe crabs shall only be harvested from a gill net, daily, ~~between the hours of sunrise and sunset~~ after sunrise and before sunset.

b. It shall be unlawful for any person to land horseshoe crabs caught by a gill net in excess of 250 horseshoe crabs per day.

c. It shall be unlawful for any person to harvest or possess horseshoe crabs taken by any gill net that has a stretched mesh measure equal to or greater than six inches, unless the twine size of that gill net is equal to or greater than 0.81 millimeters in diameter (0.031 inches), and that person possesses his own valid commercial striped bass permit or his own black drum harvesting and selling permit, as well as either a horseshoe crab endorsement license or horseshoe crab bycatch permit.

H. From April 1 through June 30, in the Toms Cove Area, it shall be unlawful for any person to place, set, or fish any gill net, except as described in this subsection.

1. From April 1 through May 31, any gill net licensed as over 600 feet and up to 1,200 feet in length shall have at least one anchored end 800 feet from the mean low water line.

2. From June 1 through June 30, it shall be unlawful to place, set, or fish any gill net after sunset or before sunrise.

~~H. I.~~ I. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

~~I. J.~~ J. When it is projected and announced that 65,065 of the commercial quota, as described in subsection E of this section, has been taken from waters east of the COLREGS Line, the limitations on the possession and landing of male horseshoe crabs are as follows:

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1. It shall be unlawful for any person who possesses a valid unrestricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,250 male horseshoe crabs per day.
2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 500 male horseshoe crabs per day.
3. It shall be unlawful for any person who possesses a valid horseshoe crab bycatch permit to possess aboard any vessel east of the COLREGS Line or to land more than 250 male horseshoe crabs per day.
4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel, east of the COLREGS Line, to possess or land more than 500 male horseshoe crabs per day.

V.A.R. Doc. No. R13-3810; Filed July 25, 2013, 9:32 a.m.

## BOARD OF COAL MINING EXAMINERS

### Fast-Track Regulation

**Title of Regulation: 4VAC25-20. Board of Coal Mining Examiners Certification Requirements (amending 4VAC25-20-210, 4VAC25-20-220).**

**Statutory Authority: §§ 45.1-161.28 and 45.1-161.34 of the Code of Virginia.**

**Public Hearing Information: No public hearings are scheduled.**

**Public Comment Deadline: September 11, 2013.**

**Effective Date: September 25, 2013.**

**Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.**

**Basis: Section 45.1-161.28 of the Code of Virginia authorizes the board to promulgate regulations necessary or incidental to the performance of its duties. Section 45.1-161.34 of the Code of Virginia mandates that the board promulgate regulations establishing requirements for programs of continuing education for holders of certification.**

**Purpose: The purpose of this regulation is to reduce regulatory burden on those applying for certification in advanced first aid instruction by increasing the number of training programs in cardiopulmonary resuscitation (CPR) from which applicants can select. The current regulation only allows two options and other programs currently exist that are less expensive and may better fit the applicant's needs. Standards for first aid instruction and training are necessary to protect the public health, safety, and welfare.**

**Rationale for Using Fast-Track Process: This regulation reduces regulatory burden, lowers costs, and increases the**

options for the regulated community. Therefore, it is expected to be noncontroversial.

**Substance: This regulatory action amends two sections related to certification for advanced first aid instruction. The first change would allow for annual refresher training and recertification every two years for CPR, as opposed to the current annual recertification requirement. Certifications offered by entities such as the American Red Cross are typically good for two years. The second change would increase the number of acceptable training programs applicants can complete in order to receive certification.**

**Issues: The primary advantage to this regulation is to reduce costs and burdens on the regulated community; it will have no impact on state government or localities. There are no known disadvantages.**

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board of Coal Mining Examiners (Board) proposes two amendments to these regulations. First, the Board proposes to clarify that for ongoing advanced first aid certification, CPR recertification need only be done once every two years instead of annually. Second, for advanced first aid instructor certification, the Board proposes to accept CPR certification by other training programs in addition to the American Heart Association or the American Red Cross. Currently only CPR training by the American Heart Association and the American Red Cross are accepted.

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

**Estimated Economic Impact.** The Board issues numerous certifications, including advanced first aid. Required training for the advanced first aid certification includes cardiopulmonary resuscitation (CPR). Continuing education, including recertification in CPR, is required in order to remain certified in advanced first aid in good standing. The current regulations imply that recertification in CPR should be done annually; but certifications for CPR last for two years in practice. Thus, the Board proposes to amend the language in these regulations to make clear that the CPR recertification need only be done once every two years instead of annually. This proposed change will be beneficial in that it will eliminate confusion, but will not change what occurs and what is required in practice.

In addition to issuing certification in advanced first aid, the Board also certifies advanced first aid instructors. The current regulations state that applicants must be certified in CPR by either the American Heart Association or the American Red Cross. The Board proposes to also accept CPR certification by other training programs which are approved by the Virginia Office of Emergency Services and approved by the Chief of the Division of Mines. According to the Department of Mines, Minerals and Energy, one such organization under consideration is the American Safety and Health Institute.



This proposed change has the potential to moderately reduce costs for individuals seeking advanced first aid instructor certification. CPR training by the American Safety and Health Institute or another potentially approved organization may be offered at a closer location or a more convenient time for advanced first aid instructor certification applicants. So time and perhaps fuel may be saved. Also, these potentially approved organizations may charge lower fees than the American Heart Association or the American Red Cross. Assuming that the Virginia Office of Emergency Services and the Chief of the Division of Mines only approve organizations that provide competent training, the proposal to approve additional organizations for CPR training should not negatively affect the CPR providing/instructing competence of certified advanced first aid instructors. Thus this proposal should provide a net benefit.

**Businesses and Entities Affected.** The proposed amendments potentially affect the approximately 15 to 20 coal mining operators in the Commonwealth, as well as all the 826 individuals certified in advanced first aid and individuals certified as advanced first aid instructors by the Board.<sup>1</sup> Providers of CPR training such as entities affiliated with the American Heart Association, the American Red Cross, and the American Safety and Health Institute are also potentially affected.

**Localities Particularly Affected.** The proposed regulatory amendments particularly affect the counties where coal mining predominantly occurs, i.e., Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise.<sup>2</sup>

**Projected Impact on Employment.** The proposal to accept CPR certification by other training programs (in addition to the American Heart Association or the American Red Cross) for advanced first aid instructor certification may shift a moderate amount of business from American Heart Association or the American Red Cross affiliated training establishments to other approved organizations. This proposed change will not likely have a large impact on employment though.

**Effects on the Use and Value of Private Property.** The proposal to accept CPR certification by other training programs (in addition to the American Heart Association or the American Red Cross) for advanced first aid instructor certification may enable advanced first aid instructor certification applicants to find approved training at a closer location and/or a location with lower fees or more conveniently timed classes. Thus, there may be a shift in a moderate amount of business from American Heart Association or the American Red Cross affiliated training establishments to other approved organizations.

**Small Businesses: Costs and Other Effects.** The proposed amendments will not increase costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments do not adversely affect small businesses.

**Real Estate Development Costs.** The proposed amendments are unlikely to significantly 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.

<sup>1</sup> Figures provided by the Department of Mines, Minerals and Energy

<sup>2</sup> Source: Department of Mines, Minerals and Energy

**Agency's Response to Economic Impact Analysis:** The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

**Summary:**

*The amendments provide for (i) annual training in cardiopulmonary resuscitation (CPR) and recertification every two years to maintain advanced first aid certification and (ii) CPR certification by training programs other than those of the American Heart Association or the American Red Cross.*

**4VAC25-20-210. Advanced first aid.**

A. Applicants shall complete a 24-hour advanced first aid class, at minimum, taught by a certified advanced first aid instructor or possess appropriately related work experience approved by the chief and pass the advanced first aid examination.

B. Approved advanced first aid classes shall cover the following subjects:

1. Introduction to first aid;

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2. Respiratory emergencies and cardiopulmonary resuscitation; i.e., heart saver or other four-hour equivalent;
3. Removal of foreign bodies from the throat (the Heimlich Maneuver);
4. Wounds;
5. Shock;
6. Specific injuries including head and chest;
7. Contamination, infection, and prevention;
8. Burns;
9. Cold exposure and frost bite;
10. Bone and joint injuries;
11. Dressings and bandages;
12. Sudden illness;
13. Emergency underground rescue and transfer;
14. Unusual rescue situations related to mining;
15. Poisoning, toxic and hazardous materials;
16. Transportation of victims; and
17. Heat exposure.

C. An advanced first aid certification in good standing with the BCME shall remain valid until the last day of the month following the anniversary date of the initial or continuing education training. Certified persons shall complete four hours continuing education annually, which is taught by a certified advanced first aid instructor, to maintain their advanced first aid card. This continuing education requirement shall include ~~recertification~~ documented annual training in CPR and recertification every two years.

D. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed.

E. Applicants holding a valid EMT card or EMT first responder card, shall be deemed eligible to receive advanced first aid certification without having to complete the initial advanced first aid class or without passing the advanced first aid examination. All applicants shall complete eight hours of continuing education. The advanced first aid certification shall start on the day the applicant's EMT certification or EMT first responder certification expires.

F. Failure to complete required continuing education shall result in suspension of the certification pending completion of the continuing education. If the continuing education requirement is not met within one year from the suspension date, then the certification shall be revoked by the BCME.

G. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

## **4VAC25-20-220. Advanced first aid instructor.**

A. Applicants shall be certified as an advanced first aid instructor by the American Red Cross, National Safety Council, Virginia Office of Emergency Medical Services, or as otherwise approved by the chief. Applicants shall also be certified in cardiopulmonary resuscitation by the American Heart Association ~~or~~ the American Red Cross, or other training programs approved by the Virginia Office of Emergency Medical Services and approved by the chief. Advanced first aid instructors must use the materials and training aids necessary to deliver the skills and training associated with advanced first aid.

B. The holder of the certificate shall submit documentation to the division indicating that they have continued their certification as required by subsection A of this section or by teaching one initial or refresher first aid training course for DMME within a two-year period.

C. Failure to maintain a certified advanced first aid instructor's certification will result in suspension of the applicant's BCME certification. Applicants may meet the teaching requirement by teaching under the supervision of an advanced first aid instructor. If the certification is not renewed within one year from the suspension date, then the certification shall be revoked by the BCME.

D. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

VA.R. Doc. No. R13-3395; Filed July 12, 2013, 9:42 a.m.

## **DEPARTMENT OF MINES, MINERALS AND ENERGY**

### **Fast-Track Regulation**

Title of Regulation: **4VAC25-35. Certification Requirements for Mineral Miners (amending 4VAC25-35-75).**

Statutory Authority: § 45.1-161.292:19 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 11, 2013.

Effective Date: September 26, 2013.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

Basis: Section 45.1-161.292:19 A of the Code of Virginia directs the Department of Mines, Minerals and Energy (DMME) to issue certifications for mineral miners to ensure the health and safety of persons and property associated with mineral mining. Section 45.1-161.292:19 C of the Code of

Virginia grants DMME the authority to promulgate regulations necessary or incidental to the performance of its duties.

**Purpose:** The purpose of this action is to reduce regulatory burden on mineral mine operators in the Commonwealth and to maintain consistency across the administrative code. "Preshift inspections" is a term of art in the mining industry. The current language requires a mandatory inspection of the work area prior to the beginning of the work shift. The term is overly burdensome, and it is not used anywhere else in the Virginia Administrative Code. The amended language reflects a more appropriate, consistent standard.

**Rationale for Using Fast-Track Process:** This rulemaking is expected to be noncontroversial as the only amendment serves to reduce regulatory burden and to ensure consistency.

**Substance:** The term "preshift inspections" is changed to "examinations" in this action. Preshift inspections is a term of art and is overly rigid in this particular context. The proposed change would maintain consistency across other sections of the administrative code such as 4VAC25-35-75 A and 4VAC25-40-130.

**Issues:** The advantages of this action would be reduced regulatory burden and increased consistency. There are no disadvantages.

#### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The current regulations state that The surface foreman shall oversee any preshift inspections of the plant that are performed by a cement plant examiner. The Department of Mines, Minerals and Energy (DMME) proposes to replace preshift inspections with examinations in that sentence.

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

Estimated Economic Impact. Preshift inspections is a term of art that DMME believes is overly rigid in this particular context. The proposed change in language will make the requirement consistent with other sections of the administrative code such as 4VAC25-35-75 A and 4VAC25-40-130. The amendment will create a small savings in staff time and will not adversely affect safety. Thus, the proposed change creates a net benefit.

Businesses and Entities Affected. The one firm located in the Commonwealth that has a permitted mine site with a cement processing facility is affected by the proposed amendment. This firm is not a small business.

Localities Particularly Affected. The one firm affected by the proposed amendment is in Botetourt County.

Projected Impact on Employment. The proposed amendment does not affect employment.

Effects on the Use and Value of Private Property. The proposed amendment will create a small savings in staff time for the affected firm.

Small Businesses: Costs and Other Effects. The proposed amendment does not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment does not affect small businesses.

Real Estate Development Costs. The proposed amendment does 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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

#### Summary:

*The amendment changes the term used to describe a surface foreman oversight requirement of an inspection of the plant performed by a cement plant examiner from "preshift inspections" to "examinations."*

#### **4VAC25-35-75. Cement plant examiner.**

A. Competent persons who are certified as a general mineral miner and who possess at least one year experience working at a cement plant may assist the surface foreman in performing examinations of active work areas of cement plants at the beginning of each shift.

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B. The surface foreman shall oversee any ~~preshift inspections~~ examinations of the plant that are performed by a cement plant examiner.

C. Cement plant examiners shall be trained in the safety and health aspects of the plant area they may examine and be trained in the procedures for work place examination and recordkeeping. The operator shall maintain records of the training as required in 4VAC25-40-100.

VA.R. Doc. No. R13-3521; Filed July 12, 2013, 9:54 a.m.

## Fast-Track Regulation

Title of Regulation: **4VAC25-40. Safety and Health Regulations for Mineral Mining (repealing 4VAC25-40-900, 4VAC25-40-950, 4VAC25-40-970, 4VAC25-40-1040, 4VAC25-40-1180, 4VAC25-40-1980, 4VAC25-40-2420, 4VAC25-40-2430, 4VAC25-40-3800, 4VAC25-40-4030, 4VAC25-40-4050).**

Statutory Authority: §§ 45.1-161.3, 45.1-161.294, and 45.1-161.305 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 11, 2013.

Effective Date: September 26, 2013.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

Basis: The Department of Mines, Minerals and Energy (DMME) is authorized to promulgate regulations necessary to the performance of its duties under § 45.1-161.292:19 of the Code of Virginia. Section 45.1-161.294 of the Code of Virginia requires the Director of DMME to promulgate regulations necessary to ensure the health and safety of mineral miners in underground mineral mines. Section 45.1-161.305 contains a similar requirement for mineral miners working on surface mineral mines.

Purpose: The purpose of this action is to repeal unnecessary or duplicative regulations. There are no substantive changes to the regulations.

Rationale for Using Fast-Track Process: This action is expected to be noncontroversial because unnecessary or duplicative regulations are being repealed.

Substance: Eleven sections of 4VAC25-40 are being repealed because they are duplicative or unnecessary. No substantive changes are being made.

Issues: The primary advantage is simplifying the administrative code by eliminating unnecessary or duplicative regulations. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to repeal several sections of these regulations.

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

Estimated Economic Impact. Most of the language proposed for repeal is redundant with language in other regulations. The repeal of this language should have no impact.

The current regulations state that The total pounds of explosives and blasting agents in any blast shall not exceed 40,000 pounds without the approval of the director. DMME also proposes to repeal this sentence. The agency points out that since all blasts are monitored by seismograph and must meet established ground vibration and air-blast limits, current blasting technology does not warrant this restriction. Eliminating this requirement would be beneficial in that it will save time for both the miners (staff time spent asking for approval) and DMME (staff time spent granting approval).

Businesses and Entities Affected. There are 433 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these (roughly 390) would qualify as small businesses.<sup>1</sup>

Localities Particularly Affected. The proposed regulations will affect all localities in the Commonwealth that have mineral mines. According to DMME, 91% of Virginia's counties have mineral mines governed by these regulations.

Projected Impact on Employment. The proposed amendments will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of the requirement that approval be received from DMME's director prior to blasts exceeding 40,000 total pounds of explosives and blasting agents will save a small amount of time for mining staff.

Small Businesses: Costs and Other Effects. The proposed amendments will not significantly affect costs for small businesses beyond a small savings in staff time as described above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly 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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons

and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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.

<sup>1</sup> Data source: Department of Mines, Minerals and Energy

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*As part of the Governor's Regulatory Reform Initiative, the amendments repeal sections of 4VAC25-40, Safety and Health Regulations for Mineral Mining, that are unnecessary or duplicative. No substantive changes are made to the regulations.*

**4VAC25-40-900. Total weight of explosives. (Repealed.)**

~~The total pounds of explosives and blasting agents in any blast shall not exceed 40,000 pounds without the approval of the director.~~

**Part VII**

~~Drilling—Surface and Underground~~

**4VAC25-40-950. Inspection of equipment prior to use. (Repealed.)**

~~Drillers shall inspect their equipment prior to use. Equipment defects affecting safety shall be reported to the certified foreman.~~

**4VAC25-40-970. Safe operation of drills. (Repealed.)**

~~Drillers shall inspect their work area for hazards prior to drilling; drills shall be operated from a safe position. Any hazards found shall be eliminated before beginning drilling operations.~~

**4VAC25-40-1040. Clothing. (Repealed.)**

~~Drillers and helpers shall not wear loose fitting clothes which may become caught in moving parts of the drill.~~

**4VAC25-40-1180. Safety devices. (Repealed.)**

~~Safety devices on compressed air systems shall be checked daily by the operator or his agent.~~

**4VAC25-40-1980. Correction of safety hazards. (Repealed.)**

~~All safety hazards shall be corrected before work is performed in any area.~~

**4VAC25-40-2420. Safety in electrical storms. (Repealed.)**

~~Persons shall not stand on the ground in the vicinity of an electrically powered shovel or other similar heavy equipment during an electrical storm.~~

**4VAC25-40-2430. Carrying tools and supplies. (Repealed.)**

~~Tools and supplies shall be carried in the hands and not on the shoulders when persons travel near bare power conductors.~~

**4VAC25-40-3800. Fixed ladders. (Repealed.)**

~~Fixed ladders shall meet the requirements of 4VAC25-40-1990 and 4VAC25-40-2000.~~

**4VAC25-40-4030. Employees working alone. (Repealed.)**

~~No employee shall be assigned, allowed, or required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless the person can be heard or seen.~~

**4VAC25-40-4050. Record of persons in mine. (Repealed.)**

~~An accurate record of the persons going in and out of the mine shall be kept on the surface.~~

VA.R. Doc. No. R13-3522; Filed July 12, 2013; 9:58 a.m.

**TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

**STATE BOARD OF JUVENILE JUSTICE**

**Final Regulation**

Title of Regulation: **6VAC35-41. Regulation Governing Juvenile Group Homes and Halfway Houses (adding 6VAC35-41-10 through 6VAC35-41-1330).**

Statutory Authority: §§ 16.1-309.9, 66-10, and 66-24 of the Code of Virginia.

Effective Date: January 1, 2014.

Agency Contact: Barbara Peterson-Wilson, Regulatory Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 588-3902, FAX (804) 371-6490, or email barbara.peterson-wilson@djj.virginia.gov.

Summary:

*This regulatory action consolidates the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into one new regulation (6VAC35-41) that will govern juvenile residential facilities funded under the Virginia Juvenile Community Crime Control Act (group homes)*

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and halfway houses operated by the Department of Juvenile Justice. The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each distinct type of facility. After a comprehensive review, amendments were made to accommodate each type of facility's specific needs and to enhance program and service requirements to best provide for the residents.

Most provisions in the new regulation do not vary in any substantive way from those mandated by current regulation, board policy, or law. However, several new provisions include: (i) requiring copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission; (ii) allowing greater flexibility in the timing of yearly fire inspections; (iii) eliminating the requirements that staff write an initial plan that outlines a structured program of care and a daily routine within three days and a behavior support plan within 30 days of a resident's commitment; (iv) allowing an exception to daily shower requirements for times when there are draught conditions; (v) requiring facility staff to enroll new residents in school within five days of admission; (vi) requiring approval from a parent, placing agency, and facility administrator before a resident can visit the home of a facility employee; and (vii) requiring each facility to formulate an Internet usage policy for residents.

The recommended changes since publication of the proposed regulation are in response to the public comment received. The majority of the changes relate to the adoption of requirements pertaining to the department's zero-tolerance policy regarding abuse in the training and residents' rights sections. Other amendments relate to the reporting of serious incidents and suspected child abuse and neglect, staff and volunteer training and retraining, searches of residents, residents' rights, and ensuring that the facilities are following the current recommendations or guidance from the applicable agencies.

The following is a summary of the changes made to the proposed regulation:

1. (6VAC35-41-90): Adds requirements that (i) the parents of all residents be notified if an incident at the facility occurs involving a resident's death (provided such notice does not violate confidentiality requirements or interfere with any investigation or prosecution); and (ii) the notice to the parent, department director, and placing agency occur without undue delay.
2. (6VAC35-41-100): Adds a requirement that procedures include "measures to be taken to ensure the safety of the resident and staff" when child abuse or neglect is suspected.
3. (6VAC35-41-105): Adds clarifying language that such reporting includes any occurrence of physical abuse, sexual abuse, or sexual harassment.
4. (6VAC35-41-200, 210, 300): Amends the training requirements of these sections to clarify that such training must include the actions that are prohibited in facilities, that is, abuse, discrimination, unsanitary living conditions, and denial of health care.
5. (6VAC35-41-310): Changes the requirement that the records include "written references or notations of oral references" to "documentation of reference checks."
- (6VAC35-41-330): Changes language so that provisions apply to "all" records as stated therein.
6. (6VAC35-41-430): Adds medical waste as materials that must be stored, used, and disposed of in appropriate receptacles in accordance with applicable federal, state, and local requirements.
7. (6VAC35-41-510): Adds a requirement that all patdown and frisk searches must be conducted by staff of the same sex of the resident being searched, except in emergencies.
8. (6VAC35-41-540): Amends a list of weapons to ensure it does not preclude inclusion of other prohibited weapons, such as tasers and stun guns.
9. (6VAC35-41-560): Clarifies that any form of "physical abuse, sexual abuse, or sexual harassment are prohibited" and adds a general statement that discrimination in violation of state or federal constitutions, laws, or regulations is prohibited, which replaces a statement with enumerated classes.
10. (6VAC35-41-565): Adds a section requiring the facilities to assess whether a resident is at risk for physical or emotional harm and take preventative steps as needed to ensure the resident's safety and well-being.
11. (6VAC35-41-610): Adds a statement that linens should be cleaned more frequently than every seven days, if needed.
12. (6VAC35-41-760): Adds a requirement that residents be oriented on their rights, including but not limited to the prohibited actions and adds language to require staff to inquire of the residents' parents or legal guardians regarding any immediate medical concerns or conditions the resident may have.
13. (6VAC35-41-920): Deletes the requirement that staff provide 24-hour awake supervision, seven days a week as residents of group homes attend public school and participate in other unsupervised activities in the communities.
14. (6VAC35-41-1260): Requires first aid kits to have an inventory of the contents.
15. (6VAC35-41-1290): Allows facilities flexibility in how the program is detailed in any applicable procedure

or manual by deleting (i) the requirement that "sanctions shall be listed in the order of their relative degree of restrictiveness and shall contain alternative to room confinement as a sanction" to account for programs that allow time out, either at the request of the resident or staff, to be used as a primary intervention; (ii) "privileges are applied and" in subdivision B 5 since the acquisition of privileges in many facilities takes place over time, that is, earning a specific programmatic level, etc., and includes a whole set of privileges. The specifics on how and when each privilege is earned would be more appropriately addressed in facility procedures; and (iii) deleting "specification of the process for implementing such procedures" as this is inclusive in the meaning of a "behavior management program."

16. (6VAC35-41-1320): Mandates that restraints be implemented, monitored, and discontinued only by staff who have been trained.

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

**CHAPTER 41**  
**REGULATION GOVERNING JUVENILE GROUP**  
**HOMES AND HALFWAY HOUSES**

**Part I**  
**General Provisions**

**6VAC35-41-10. Definitions.**

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

"Annual" means within 13 months of the previous event or occurrence.

"Board" means Board of Juvenile Justice.

"Case record" or "record" means written or electronic information relating to one resident and the resident's family, if applicable. This information includes, but is not limited to, social, medical, psychiatric, and psychological records; reports; demographic information; agreements; all correspondence relating to care of the resident; service plans with periodic revisions; aftercare plans and discharge summary; and any other information related to the resident.

"Contraband" means any item possessed by or accessible to a resident or found within a facility or on its premises (i) that is prohibited by statute, regulation, or facility procedure, (ii) that is not acquired through approved channels or in prescribed amounts, or (iii) that may jeopardize the safety and security of the facility or individual residents.

"Department" or "DJJ" means the Department of Juvenile Justice.

"Direct care staff" means the staff whose primary job responsibilities are (i) maintaining the safety, care, and well-

being of residents and (ii) implementing the structured program of care and behavior management program.

"Direct supervision" means that the staff may work with residents while not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, taking of hostages, major disturbances, escape, and bomb threats. Emergency does not include regularly scheduled employee time off or other situations that could be reasonably anticipated.

"Facility administrator" means the individual who has the responsibility for the on-site management and operation of the facility on a regular basis.

"Family oriented group home" means a private home in which residents may reside upon placement by a lawful placing agency.

"Group home" means a juvenile residential facility that is a community based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and does not exceed the capacity approved by the regulatory authority. For the purpose of this chapter, a group home includes a halfway house that houses residents in transition from a commitment to the department.

"Individual service plan" or "service plan" means a written plan of action developed, revised as necessary, and reviewed at intervals to meet the needs of a resident. The individual service plan specifies (i) measurable short-term and long-term goals and (ii) the objectives, strategies, and time frames for reaching the goals.

"Juvenile residential facility" or "facility" means a publicly or privately operated facility or placement where 24-hour per day care is provided to residents who are separated from their legal guardians and that is required to be [~~licensed or~~] certified. As used in this regulation, the term includes, but is not necessarily limited to, group homes, family-oriented group homes, and halfway houses and excludes juvenile correctional centers and juvenile detention centers.

"Living unit" means the space in which a particular group of residents in care of a juvenile residential facility [~~reside~~ resides ]. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the living unit. Depending upon its design, a building may contain one living unit or several separate living units.

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"On duty" means the period of time an employee is responsible for the direct supervision of one or more residents.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of an individual, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom the individual regularly resides; (iii) a person judicially appointed as a legal guardian; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Placement" means an activity by any person that provides assistance to a placing agency, parent, or legal guardian in locating and effecting the movement of a resident to a juvenile residential facility.

"Placing agency" means (i) any person, group, court, court service unit, or agency licensed or authorized by law to place residents in a juvenile residential facility or (ii) a local board of social services authorized to place residents in a juvenile residential facility.

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

"Provider" means the person, corporation, partnership, association, locality, commission, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the regulatory and statutory requirements relating to the facility.

"Regulatory authority" means the board or the department as designated by the board.

"Resident" means an individual who is legally placed in, formally placed in, or admitted to a juvenile residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, about behaviors that are not permitted, and about the sanctions that may be applied when impermissible behaviors occur.

"Shelter care facility" means a facility or an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or in electronic form.

## **6VAC35-41-20. Applicability.**

This chapter applies to group homes, halfway houses, shelter care, and other applicable juvenile residential facilities regulated by the board as authorized by statute. Parts I (6VAC35-41-10 et seq.) through VI (6VAC35-41-710 et seq.), XII (6VAC35-41-1150 et seq.), and XIII (6VAC35-41-

1290 et seq.) of this chapter apply to all juvenile residential facilities, with the exception of family-oriented group homes, governed by this regulation unless specifically excluded. Parts VII (6VAC35-41-950) through XI (6VAC35-41-1120 et seq.) of this chapter apply only to the specific programs or facilities as indicated.

## **6VAC35-41-30. Previous regulations terminated.**

This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51) and the Standards for Juvenile Residential Facilities (6VAC35-140) for the regulation of all juvenile residential facilities as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for juvenile detention facilities and juvenile correctional centers, regulated by the board, until such time as the board adopts new regulations related thereto.

## **6VAC35-41-40. Certification.**

A. The provider shall comply with the provisions of the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20). The provider shall:

1. Demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations;
2. Implement approved plans of action to correct findings of noncompliance [ ~~are being implemented~~ ]; and
3. Ensure no noncompliance may pose [ ~~an~~ any ] immediate and direct danger to residents.

B. The provider shall maintain the documentation necessary to demonstrate compliance with this chapter for a minimum of three years.

C. The current certificate shall be posted at all times in each facility in a place conspicuous to the public.

## **6VAC35-41-50. Age of residents.**

A. Facilities shall admit residents only in compliance with the age limitations approved by the board in establishing the facility's certification capacity, except as provided in subsection B of this section.

B. A facility shall not admit a resident who is above the age approved for [ ~~license~~ certification ]. A [ ~~child~~ resident ] may remain in the facility above the age of [ ~~license~~ certified ] capacity (i) to allow the resident to complete a program identified in the resident's individual service plan and (ii) if a discharge plan has been established. This subsection does not apply to shelter care programs.

## **6VAC35-41-60. Relationship to the regulatory authority.**

A. All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the regulatory authority.



B. A written report of any contemplated changes in operation that would affect the terms of the [ ~~license or~~ ] certificate or the continuing eligibility for [ ~~licensure or~~ ] certification shall be submitted to the regulatory authority. A change may not be implemented prior to approval by the regulatory authority.

**6VAC35-41-70. Relationship with the department.**

A. The director or designee shall be notified within five working days of any significant change in administrative structure or newly hired facility administrator.

B. Any of the following that may be related to the health [ , ] safety [ , ] or human rights of residents shall be [ ~~self-reported~~ reported ] to the director or designee within 10 days: (i) lawsuits against the facility or its governing authority and (ii) settlements with the facility or its governing authority.

**6VAC35-41-80. Variances.**

A. Board action may be requested by the facility administrator to relieve a facility from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, either permanently or for a determined period of time, as provided in the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20).

B. Any such variance may not be implemented prior to approval of the board.

**6VAC35-41-90. Serious incident reports.**

A. The following events shall be reported within 24 hours to: (i) [ ~~to~~ ] the placing agency, (ii) [ ~~to~~ ] the parent or legal guardian, or both, as applicable and appropriate, and (iii) the director or designee:

- 1. Any serious incident, accident, illness, or injury to the resident;
- [ ~~2. The death of a resident;~~
- ~~3. 2. ] Any overnight absence from the facility without permission;~~
- [ ~~4. 3. ] Any runaway;~~
- [ ~~5. 4. ] Any fire, hostage or emergency situation, or natural disaster that jeopardizes the health, safety, and welfare of the residents; and~~
- [ ~~6. 5. ] Any suspected case of child abuse or neglect at the facility, on a facility event or excursion, or involving facility [ ~~center~~ ] staff as provided in 6VAC35-41-100 (suspected child abuse or neglect).~~

The [ ~~24-hour~~ 24-hour ] reporting requirement may be extended when the emergency situation or natural disaster has made such communication impossible (e.g., modes of communication are not functioning). In such cases, notice shall be provided as soon as feasible thereafter.

B. The provider shall notify the director or designee within 24 hours of any events detailed in subsection A of this section

and all other situations required by the regulatory authority of which the facility has been notified.

C. [ Any incident involving the death of a resident shall be reported to the individuals specified in subsections A and B of this section without undue delay. If an incident involving the death of a resident occurs at the facility, the facility shall notify the parents or legal guardians, as appropriate and applicable, of all residents in the facility provided such notice does not violate any confidentiality requirements or jeopardize any law-enforcement or child protective services investigation or the prosecution of any criminal cases related to the incident.

D. ] The facility shall (i) prepare and maintain a written report of the events listed in subsections A and B of this section and (ii) submit a copy of the written report to the director or designee. The report shall contain the following information:

- 1. The date and time the incident occurred;
- 2. A brief description of the incident;
- 3. The action taken as a result of the incident;
- 4. The name of the person who completed the report;
- 5. The name or identifying information of the person who made the report to the placing agency and to either the parent or legal guardian, as appropriate and applicable; and
- 6. The name of or identifying information provided by the person to whom the report was made, including any law enforcement or child protective service personnel.

[ ~~D. E. ] The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.~~

[ ~~E. F. ] In addition to the requirements of this section, any serious incident involving an allegation of child abuse or neglect at the facility, at a facility sponsored event, or involving facility staff shall be governed by 6VAC35-41-100 (suspected child abuse or neglect).~~

**6VAC35-41-100. Suspected child abuse or neglect.**

A. When there is a reason to suspect that a child is an abused or neglected child, the matter shall be reported immediately to the local department of social services as required by § 63.2-1509 of the Code of Virginia and in accordance with the written procedures.

B. Written procedures shall be distributed to all staff members and shall at a minimum provide for the following:

- 1. Handling accusations against staff;
- 2. Reporting and documenting suspected cases of child abuse and neglect; [ ~~and~~ ]
- 3. Cooperating during any investigation [ ; and
- 4. Measures to be taken to ensure the safety of the resident and the staff. ]

C. Any case of suspected child abuse or neglect shall be reported and documented as required in 6VAC35-41-90

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(serious incident reports). The resident's record shall contain a written reference that a report was made.

## **6VAC35-41-105. Reporting criminal activity.**

A. Staff shall be required to report all known criminal activity by residents or staff, including but not limited to any physical abuse, sexual abuse, or sexual harassment, to the facility administrator for appropriate action.

B. The facility administrator, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement, child protective services, and the department as appropriate and applicable, of suspected criminal violations by residents or staff. Suspected criminal violations relating to the health and safety or human rights of residents shall be reported to the director or designee.

C. The facility shall assist and cooperate with the investigation of any such complaints and allegations as necessary. ]

## **6VAC35-41-110. Grievance procedure.**

A. Written procedure shall provide that residents are oriented to and have continuing access to a grievance procedure that provides for:

1. Resident participation in the grievance process with assistance from staff upon request;
2. Investigation of the grievance by an objective employee who is not the subject of the grievance;
3. Documented, timely responses to all grievances with the reasons for the decision;
4. At least one level of appeal;
5. Administrative review of grievances;
6. Protection from retaliation or threat of retaliation for filing a grievance; and
7. Hearing of an emergency grievance within eight hours.

B. Each resident shall be oriented to the grievance procedure in an age or developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language and (ii) posted in an area easily accessible to residents and their parents and legal guardians.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

### Part II

### Administrative and Personnel

#### Article 1

#### General Provisions

## **6VAC35-41-120. Responsibilities of the provider or governing authority.**

A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the holder of the certificate (governing authority). Any change in the identity or corporate status of the governing

authority or provider shall be reported to the director or designee.

B. The governing authority shall appoint a facility administrator to whom it delegates the authority and responsibility for administrative direction of the facility.

C. A written decision-making plan shall be developed and implemented and shall provide for a staff person with the qualifications of a facility administrator to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart.

D. The provider shall have a written statement of its (i) purpose, (ii) population served, and (iii) available services for each facility subject to this regulation.

E. Written procedures shall be developed and implemented to monitor and evaluate quality assurance in each facility. Improvements shall be implemented when indicated.

## **6VAC35-41-130. Insurance.**

A. Documentation of the following insurance coverage shall be maintained:

1. Liability insurance covering the premises and the facility's operations, including all employees and volunteers, if applicable.
2. Insurance necessary to comply with Virginia's minimum insurance requirements for all vehicles used to transport residents.

B. Staff who use personal vehicles for official business, including transporting residents, shall be informed of the requirements to provide and document insurance coverage for such purposes.

## **6VAC35-41-140. Participation of residents in human research.**

A. The provider shall have procedures [ ] approved by its governing authority [ ] to govern the review, approval, and monitoring of human research. Human research means any systematic investigation, including research development, testing, and evaluating, involving human subjects, including but not limited to a resident or his parents, guardians, or family members, that is designed to develop or contribute to generalized knowledge. Human research does not include statistical analysis of information readily available on the subject that does not contain any identifying information or research exempted by federal research regulations pursuant to 45 CFR 46.101(b).

B. Information on residents shall be maintained as provided in 6VAC35-41-330 (maintenance of [ residents' ] records) and all records and information related to the human research shall be kept confidential in accordance with applicable laws and regulations.

C. The provider may require periodic progress reports of any research project and a formal final report of all completed research projects.

**[ 6VAC35-41-145. Operational procedures.**

Current operational procedures shall be accessible to all staff. ]

Article 2  
Hiring

**6VAC35-41-150. Job descriptions.**

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

1. Job title or position;
2. Duties and responsibilities of the incumbent;
3. Job title or identification of the immediate supervisor; and
4. Minimum education, experience, knowledge, skills, and abilities required for [ ~~entry level~~ entry-level ] performance of the job.

B. A copy of the job description shall be given to each person assigned to a position prior to assuming that position's duties.

**6VAC35-41-160. Qualifications.**

A. Facilities subject to (i) the rules and regulations of a governing authority or (ii) the rules and regulations of a local government personnel office shall develop written minimum entry-level qualifications in accord with the rules and regulations of the supervising personnel authority. Facilities not subject to rules and regulations of the governing authority or a local government personnel office shall follow the minimum entry-level qualifications of the Virginia Department of Human Resource Management.

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

C. Each facility shall provide documentation of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission, required by 6VAC35-41-730 B (application for admission).

**[ 6VAC35-41-165. Employee tuberculosis screening and follow-up.**

A. On or before the employee's start date at the facility each employee shall submit evidence of freedom from tuberculosis in a communicable form that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.

C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee comes into contact with a known case of infectious tuberculosis; or
2. The employee develops chronic respiratory symptoms of three weeks duration.

D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.

E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed consistent with the current requirements of the Virginia Department of Health's Division of Tuberculosis Prevention and Control and the [ federal ] Department of Health and Human Services Centers for Disease Control and Prevention. ]

**6VAC35-41-170. Physical examination.**

When the qualifications for a position require a given set of physical abilities, all persons selected for such positions shall be examined by a physician at the time of employment to ensure that they have the level of medical health or physical ability required to perform assigned duties. Persons hired into positions that require a given set of physical abilities may be reexamined annually in accordance with written procedures.

**6VAC35-41-180. Employee and volunteer background checks.**

A. Except as provided in subsection [ ~~C~~ B ] of this section, all persons who (i) accept a position of employment at, (ii) volunteer on a regular basis and will be alone with a resident in the performance of their duties, or (iii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of [ ~~his~~ their ] duties in a juvenile residential facility shall undergo the following background checks [ , ] in accordance with § 63.2-1726 of the Code of Virginia [ , ] to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents in the facility:

1. A reference check;
2. A criminal history check;
3. A fingerprint check with the Virginia State Police and Federal Bureau of [ ~~Investigations~~ Investigation ] (FBI);

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4. A central registry check with Child Protective Services; and

5. A driving record check if applicable to the individual's job duties.

B. To minimize vacancy time when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;

2. The applicant is given written notice that continued employment is contingent on the fingerprint check results as required by subdivision A 3 of this section; and

3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when under the direct supervision of staff whose background checks have been completed, until such time as all background checks are completed.

C. Documentation of compliance with this section shall be retained in the individual's personnel record as provided in 6VAC35-41-310 (personnel records).

D. Written procedures shall provide for the supervision of nonemployee persons, who are not subject to the provisions of subsection A of this section and who have contact with residents.

## Article 3

### Employee Orientation and Training

#### **6VAC35-41-190. Required initial orientation.**

A. Before the expiration of the employee's seventh work day at the facility, each employee shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the program;

4. The facility's organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures in accordance with 6VAC35-41-490 (emergency and evacuation procedures);

6. The practices of confidentiality;

7. The residents' rights; and

8. The basic requirements of and competencies necessary to perform in [ his the ] positions.

B. Prior to working with residents while not under the direct supervision of staff who have completed all applicable orientations and training, each direct care staff shall receive a basic orientation on the following:

1. The facility's program philosophy and services;

2. The facility's behavior management program;

3. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;

4. The residents' rules of conduct and responsibilities;

5. The residents' disciplinary and grievance procedures;

6. Child abuse and neglect and mandatory reporting;

7. Standard precautions; and

8. Documentation requirements as applicable to [ his the position's ] duties.

C. Volunteers shall be oriented in accordance with 6VAC35-41-300 (orientation and training for volunteers or interns).

#### **6VAC35-41-200. Required initial training.**

A. Each full-time and part-time employee and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform [ the jobs in the position ].

1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

2. Contractors shall receive training required to perform their position responsibilities in a juvenile residential facility.

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents while delivering services, with the exception of workers employed by contract to provide behavioral health or health care services, shall complete training in the following areas:

1. Emergency preparedness and response;

2. First aid and cardiopulmonary resuscitation, unless the individual is currently certified, with certification required as applicable to their duties;

3. The facility's behavior management program;

4. The residents' rules of conduct and the rationale for the rules;

5. The facility's behavior intervention procedures, with physical and mechanical restraint training required as applicable to their duties;

6. Child abuse and neglect;

7. Mandatory reporting;

8. Maintaining appropriate professional relationships;

9. Interaction among staff and residents;

10. Suicide prevention;

11. Residents' rights [ , including but not limited to the prohibited actions provided for in 6VAC35-41-560 (prohibited actions) ];

12. Standard precautions; and

13. Procedures applicable to the employees' position and consistent with their work profiles.

C. Employees who administer medication shall have, prior to such administration, successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication.

D. Training shall be required by and provided as appropriate to the individual's job duties and in accordance with the provider's training plan.

E. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

F. Volunteers and interns shall be trained in accordance 6VAC35-41-300 (orientation and training for volunteers or interns).

**6VAC35-41-210. Required retraining.**

A. Each employee, relief staff, and contractor shall complete retraining that is specific to the individual's occupational class and the position's job description and addresses any professional development needs.

B. All staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures.

C. All direct care staff and staff who provide direct supervision of the residents while delivering services, with the exception of workers who are employed by contract to provide behavioral health or health care services, shall complete at least 40 hours of training annually that shall include training in the following areas:

1. Suicide prevention;
2. Child abuse and neglect;
3. Mandatory reporting;
4. [ Residents' rights, including but not limited to the prohibited actions provided for in 6VAC35-41-560 (prohibited actions);
5. ] Standard precautions; and
- [ ~~5. 6. ] Behavior intervention procedures.~~

D. Staff required by their position to have certification in cardiopulmonary resuscitation and first aid shall receive training sufficient to maintain current certifications.

E. Employees who administer medication shall complete an annual refresher training on the administration of medication.

F. Retraining shall (i) be required by and provided as appropriate to the individual's job duties, (ii) address any needs identified by the individual and the supervisor, if applicable, and (iii) be in accordance with the provider's training plan.

G. When an individual is employed by contract to provide services for which licensure by a professional organization is

required, documentation of current licensure shall constitute compliance with this section.

H. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements.

Article 4  
Personnel

**6VAC35-41-220. Written personnel procedures.**

The provider shall have and implement provider approved written personnel procedures and make these readily accessible to each staff member.

**6VAC35-41-230. Code of ethics.**

A written code of ethics shall be available to all employees.

**6VAC35-41-240. [ Reporting criminal activity. (Reserved.)**

A. Staff shall be required to report all known criminal activity by residents or staff to the facility administrator for appropriate action.

B. The facility administrator, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement, child protective services, and the department as appropriate and applicable, of suspected criminal violations by residents or staff. Suspected criminal violations relating to the health and safety or human rights of residents shall be reported to the director or designee.

C. The facility shall assist and cooperate with the investigation of any such complaints and allegations as necessary. ]

**6VAC35-41-250. Notification of change in driver's license status.**

Staff whose job responsibilities may involve transporting residents shall (i) maintain a valid driver's license and (ii) report to the facility administrator or designee any change in their driver's license status including but not limited to suspensions, restrictions, and revocations.

**6VAC35-41-260. Physical or mental health of personnel.**

When an individual poses a direct threat to the health and safety of a resident, others at the facility, or the public or is unable to perform essential job-related functions, that individual shall be removed immediately from all duties involved in the direct care or direct supervision of residents. The facility may require a medical or mental health evaluation to determine the individual's fitness for duty prior to returning to duties involving the direct care or direct supervision of residents. The results of any medical information or documentation of any disability related inquiries shall be maintained separately from the employee's personnel records maintained in accordance with 6VAC35-41-310 (personnel records). For the purpose of this section a direct threat means a significant risk of substantial harm.

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## Article 5 Volunteers

### **6VAC35-41-270. Definition of volunteers or interns.**

For the purpose of this chapter, volunteer or intern means any individual or group who of their own free will provides goods and services without competitive compensation.

### **6VAC35-41-280. Selection and duties of volunteers or interns.**

A. Any facility that uses volunteers or interns shall develop and implement written procedures governing their selection and use. Such procedures shall provide for the objective evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be clearly defined in writing.

D. Volunteers and interns shall neither be responsible for the duties of direct care staff nor for the direct supervision of the residents.

### **6VAC35-41-290. Background checks for volunteers or interns.**

A. Any individual who (i) volunteers on a regular basis or is an intern and (ii) will be alone with a resident in the performance of that position's duties shall be subject to the background check requirements provided for in 6VAC35-41-180 A (employee and volunteer background checks).

B. Documentation of compliance with the background check requirements shall be maintained for each intern and each volunteer for whom a background [ ~~investigation~~ check ] is required. Such records shall be kept in accordance with 6VAC35-41-310 (personnel records).

C. A facility that uses volunteers [ or interns ] shall have procedures for supervising volunteers [ or interns ], on whom background checks are not required or whose background checks have not been completed, who have contact with residents.

### **6VAC35-41-300. Orientation and training for volunteers or interns.**

A. Volunteers and interns shall be provided with a basic orientation on the following:

1. The facility;
2. The population served;
3. The basic objectives of the facility;
4. The facility's organizational structure;
5. Security, population control, emergency, emergency preparedness, and evacuation procedures;
6. The practices of confidentiality;

7. The residents' rights [ , including but not limited to the prohibited actions provided for in 6VAC35-41-560 (prohibited actions) ]; and

8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

1. Any procedures that are applicable to their duties and responsibilities; and

2. Their duties and responsibilities in the event of a facility evacuation.

## Article 6

### [ ~~Employee~~ ] Records

### **6VAC35-41-310. Personnel records.**

A. Separate up-to-date written or automated personnel records shall be maintained on each (i) employee and (ii) volunteer or intern on whom a background check is required.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;

2. Educational background and employment history;

3. [ ~~Written references or notations of oral references~~ Documentation of required reference check ];

4. Annual performance evaluations;

5. Date of employment for each position held and date of separation;

6. Documentation of compliance with requirements of Virginia law regarding child protective services and criminal history background investigations;

7. Documentation of the verification of any educational requirements and of professional certification or licensure if required by the position;

8. Documentation of all training required by this chapter and any other training received by individual staff; and

9. A current job description.

C. If applicable, health records, including reports of any required health examinations, shall be maintained separately from the other records required by this section.

D. The personnel records of volunteers and contractual service providers may be limited to documentation of compliance with the background checks as required by 6VAC35-41-180 (employee and volunteer background checks).

### **6VAC35-41-320. ~~Employee tuberculosis screening and follow-up. (Reserved.)~~**

~~A. On or before the employee's start date at the facility each employee shall submit evidence of freedom from tuberculosis in a communicable form that is no older than 30 days. The~~

~~documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.~~

~~B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.~~

~~C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:~~

~~1. The employee comes into contact with a known case of infectious tuberculosis; or~~

~~2. The employee develops chronic respiratory symptoms of three weeks duration.~~

~~D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.~~

~~E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).~~

~~F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.~~

~~G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed in compliance with Screening for TB Infection and Disease, Policy 99-001, Virginia Department of Health's Division of Tuberculosis Prevention and Control.~~

Article 7  
Residents' Records ]

**6VAC35-41-330. Maintenance of [ residents' ] records.**

A. A separate written or automated case record shall be maintained for each resident that shall include all correspondence and documents received by the facility relating to the care of that resident and documentation of all case management services provided.

B. A separate health record may be kept on each resident. The resident's active health records shall be readily accessible in case of emergency and shall be made available to authorized staff consistent with applicable state and federal statutes and regulations.

C. Each case record and health record shall be kept (i) up to date, (ii) in a uniform manner, and (ii) confidential from unauthorized access.

D. Written procedures shall provide for the management of all records, written and automated, and shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquisition of information only to persons legally authorized according to federal and state laws;

2. Facilities using automated records shall address procedures that include:

- a. How records are protected from unauthorized access;
- b. How records are protected from unauthorized Internet access;
- c. How records are protected from loss;
- d. How records are protected from unauthorized alteration; and
- e. How records are backed up [ ; ]

3. Security measures to protect records (i) from loss, unauthorized alteration, inadvertent or unauthorized access, or disclosure of information; and (ii) during transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

E. Written procedure shall specify what information is available to the resident.

F. Active and closed written records shall be kept in secure locations or compartments that are accessible to authorized staff and shall be protected from unauthorized access, fire, and flood.

G. All case records shall be retained as governed by The Library of Virginia.

**6VAC35-41-340. Face sheet.**

A. At the time of admission each resident's record shall include, at a minimum, a completed face sheet that contains the following:

- 1. The resident's full name, last known residence, birth date, [ gender sex ], race, unique numerical identifier, and admission date; [ and ]
- 2. Names, addresses, and telephone numbers of the resident's placing agency, emergency contacts, legal guardians, and parents, as applicable and appropriate [ ; and. ]

B. Upon discharge, the date of and reason for discharge, names and addresses of persons to whom the resident was discharged, and forwarding address of the resident, if known, shall be recorded on the face sheet.

C. Information shall be updated when changes occur.

Part III  
Physical Environment

**6VAC35-41-350. Buildings and inspections.**

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and

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approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to timely inspect the facility's buildings and equipment, documentation of the facility's request to schedule the annual inspection as well as documentation of any necessary follow-up with fire prevention authorities shall be maintained.

C. The facility shall maintain a current copy of its annual inspection and approval, in accordance with state and local inspection laws, regulations, and ordinances, of the following:

1. General sanitation;
2. Sewage disposal system;
3. Water supply;
4. Food service operations; and
5. Swimming pools, if applicable.

## **6VAC35-41-360. Equipment and systems inspections and maintenance.**

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent such requirements, in accordance with a schedule that is approved by the facility administrator. Testing of such equipment and systems shall, at a minimum, be conducted quarterly.

B. Whenever safety, emergency, and communications equipment or a system is found to be defective, corrective action shall be taken to rectify the situation and to repair, remove, or replace the defective equipment.

## **6VAC35-41-370. Heating and cooling systems and ventilation.**

A. Heat shall be distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

## **6VAC35-41-380. Lighting.**

A. Sleeping and activity areas in the facility shall provide natural lighting.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. There shall be night lighting sufficient to observe residents.

D. Each facility shall have a plan for providing alternative lighting in case of emergencies.

E. Outside entrances and parking areas shall be lighted.

## **6VAC35-41-390. Plumbing and water supply; temperature.**

A. Plumbing shall be maintained in operational condition, as designed.

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

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100°F to 120°F.

## **6VAC35-41-400. Toilet facilities.**

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

~~B. A.] There shall be at least one bathtub or bathtub alternative in each facility.~~

[ ~~C. B.] There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities certified [ ~~or licensed~~ ] before July 1, 1981.~~

[ ~~D. C.] There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981. Facilities [ ~~licensed or~~ ] certified after December 28, 2007, shall comply with the one-to-four ratio.~~

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

[ ~~F. E.] There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located.~~

[ ~~G. F.] When bathrooms are not designated for individual use:~~

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

[ ~~H. G.] Windows in bathrooms and dressing areas shall provide for privacy.~~

## **6VAC35-41-410. Sleeping areas.**

A. Males and females shall have separate sleeping areas.

B. No more than four residents shall share a bedroom or sleeping area.

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

D. Sleeping quarters in facilities established, constructed, or structurally modified after July 1, 1981, shall have:

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



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

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

E. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

F. Each resident shall be assigned drawer space and closet space, or their equivalent, that is accessible to the sleeping area for storage of clothing and personal belongings.

G. Windows in sleeping areas and dressing areas shall provide for privacy.

H. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily opened in case of fire or other emergency.

### **6VAC35-41-420. Furnishings.**

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

### **6VAC35-41-430. Disposal of garbage and management of hazardous materials.**

A. Provision shall be made for the collection and legal disposal of all garbage and waste materials.

B. All flammable, toxic, [ medical, ] and caustic materials within the facility shall be stored, used, and disposed of in appropriate receptacles and in accordance with federal, state, and local requirements.

### **6VAC35-41-440. Smoking prohibitions.**

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

### **6VAC35-41-450. Space utilization.**

A. Each facility shall provide for the following:

1. A living room;

2. An indoor recreation area with appropriate recreation materials;

3. An outdoor recreation area;

4. A dining area, where meals are served, that is equipped with tables and benches or chairs;

5. A visitation area that permits informal communication between residents and visitors, including the opportunity for physical contact in accordance with written procedures;

6. Kitchen facilities and equipment for the preparation and service of meals with any walk-in refrigerators or freezers equipped to permit emergency exits;

7. Space and equipment for laundry [ equipment, ] if laundry is done at the facility;

8. Space for the storage of items such as first aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials; and

9. Space for administrative activities including, as appropriate to the program, confidential conversations and [ provision for the ] storage of records and materials.

B. Spaces or areas may be interchangeably utilized but shall be in functional condition for the designated purposes.

### **6VAC35-41-460. Maintenance of the buildings and grounds.**

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This includes, but is not limited to, (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings; and (ii) all areas where residents, staff, and visitors may reasonably be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

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

### **6VAC35-41-470. Animals on the premises.**

A. Animals maintained on the premises shall be housed at a reasonable distance from sleeping, living, eating, and food preparation areas, as well as a safe distance from water supplies.

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

C. The premises shall be kept reasonably free of stray domestic animals.

D. Pets shall be provided with clean sleeping areas and adequate food and water.

## Part IV

### Safety and Security

### **6VAC35-41-480. Fire prevention plan.**

Each facility shall develop a fire prevention plan that provides for an adequate fire protection service.

### **6VAC35-41-490. Emergency and evacuation procedures.**

A. The provider shall develop a written emergency preparedness and response plan for each facility. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for provision of administrative direction and management of response activities;

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coordination of logistics during the emergency; communications; life safety of employees, contractors, interns, volunteers, visitors and residents; property protection; community outreach; and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, interns, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

- a. Communicating with employees, contractors, and community responders;
- b. Warning and notification of residents;
- c. Providing emergency access to secure areas and opening locked doors;
- d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;
- e. Relocating residents, if necessary;
- f. Notifying parents and legal guardians, as applicable and appropriate;
- g. Alerting emergency personnel and sounding alarms;
- h. Locating and shutting off utilities when necessary; and
- i. Providing for a planned, personalized means of effective egress for residents who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. Such training shall include the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency information for residents including medical information; and
5. Utilizing community support services.

C. Contractors and volunteers and interns shall be oriented in their responsibilities in implementing the emergency preparedness plan in the event of an emergency.

D. The provider shall review and document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, interns, and volunteers and incorporated into training for employees, contractors, interns, and volunteers and orientation of residents to services.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider shall take appropriate action to protect the health, safety, and welfare of the residents and to remedy the conditions as soon as possible.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the provider shall report the disaster or emergency in accordance with 6VAC35-41-90 (serious incident reports).

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they can be seen easily by staff and residents.

H. The responsibilities of the residents in implementing the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;
2. Practice in evacuating buildings;
3. Practice in alerting emergency authorities;
4. Simulated use of emergency equipment; and
5. Practice in accessing resident emergency information.

K. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;
2. Date and time of drill;
3. Amount of time to evacuate the buildings;
4. Specific problems encountered;
5. Staff tasks completed including:
  - a. Head count, and
  - b. Practice in notifying emergency authorities; and
6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

L. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency

preparedness and response plan and the evacuation drill program are met.

**6VAC35-41-500. Contraband.**

Written procedure shall provide for the control, detection, and disposition of contraband.

**6VAC35-41-510. Searches of residents.**

A. Each facility that conducts searches shall have procedures that provide that all searches shall be subject to the following:

1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.
2. Searches are conducted only by personnel who are authorized to conduct such searches.
3. The resident shall not be touched any more than is necessary to conduct the search.

B. Facilities that do not conduct searches of residents shall have a procedure prohibiting them.

C. [ Patdown and frisk searches shall be conducted by personnel of the same sex as the resident being searched, except in emergencies.

D. ] Strip searches and visual inspections of the vagina and anal cavity areas shall only be permitted (i) if ordered by a court; (ii) if conducted by law-enforcement personnel acting in his official capacity; or (iii) if the facility obtains the approval of the regulatory authority to conduct such searches. A facility that conducts such searches shall have a procedure that provides that the searches shall be subject to the following:

1. The search shall be performed by personnel of the same sex as the resident being searched;
2. The search shall be conducted in an area that ensures privacy; and
3. Any witness to the search shall be of the same [ ~~gender~~ sex ] as the resident.

[ ~~D. E.~~ ] Manual and instrumental searches of the anal cavity or vagina shall be prohibited unless court ordered.

**6VAC35-41-520. Telephone access and emergency numbers.**

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

B. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

C. An emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff or law-enforcement officials.

**6VAC35-41-530. Internet access.**

Facilities that allow resident access to the Internet shall have procedures governing such usage.

**6VAC35-41-540. Weapons.**

A. The possession, use, and storage of weapons in facilities or on the premises where residents are reasonably expected to have access are prohibited except when specifically authorized by statutes or regulations or provided in subsection B of this section. For the purpose of this section, weapons shall include [ but will not be limited to ] (i) any pistol, revolver, or other weapon intended to propel a missile of any kind by action of an explosion; (ii) any dirk, bowie knife, except a pocket knife having a folding metal blade of less than three inches, switchblade knife, ballistic knife, machete, straight razor, slingshot, spring stick, metal knucks, or blackjack; (iii) nunchucks or other flailing instrument with two or more rigid parts that swing freely; and (iv) throwing star or oriental dart.

B. Weapons shall be permitted if they are in the possession of a licensed security personnel or law-enforcement officer while in the course of his duties.

**6VAC35-41-550. Transportation.**

A. It shall be the responsibility of the facility to have transportation available or to make the necessary arrangements for routine and emergency transportation.

B. There shall be written safety rules for transportation of residents and, if applicable, for the use and maintenance of vehicles.

C. The facility shall have a procedure for the verification of appropriate licensure for staff whose duties involve transporting residents.

Part V  
Residents' Rights

**6VAC35-41-560. Prohibited actions.**

The following actions are prohibited:

1. [ Discrimination in violation of the Constitution of the United States, the Constitution of the Commonwealth of Virginia, and state and federal statutes and regulations.
2. ] Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;  
[ ~~2. 3.~~ ] Denial of contacts and visits with the resident's attorney, a probation officer, the department, regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;  
[ ~~3. 4.~~ ] Bans on contacts and visits with family or legal guardians, except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

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~~[ 4- 5. ] Any action that is humiliating, degrading, or abusive [ , including but not limited to physical abuse, sexual abuse, and sexual harassment;~~

~~5- 6. ] Corporal punishment, which is administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort;~~

~~[ 6- 7. ] Subjection to unsanitary living conditions;~~

~~[ 7- 8. ] Denial of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;~~

~~[ 8- 9. ] Denial of health care;~~

~~[ 9- 10. ] Deprivation of appropriate services and treatment;~~

~~[ 10- 11. ] Application of aversive stimuli, except as permitted pursuant to other applicable state regulations. Aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual [ ,but does not include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident ];~~

~~[ 11- 12. ] Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;~~

~~[ 12- 13. ] Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;~~

~~[ 13- Involuntary placement 14. Placement ] of a resident alone in a locked room or a secured area where the resident is prevented from leaving;~~

~~[ 14- 15. ] Use of mechanical restraints (e.g., handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, or a restraint chair);~~

~~[ 15- Involuntary use 16. Use ] of pharmacological restraints [ (administration of medication for the emergency control of an individual's behavior when the administration is not a standard treatment for the resident's medical or psychiatric condition);~~

~~16. Discrimination on the basis of race, religion, national origin, sex, or physical disability ];~~ and

~~17. Other constitutionally prohibited actions.~~

## [ 6VAC35-41-565. Vulnerable population.

A. The facility shall implement a procedure for assessing whether a resident is a member of a vulnerable population.

B. If the assessment determines a resident is a vulnerable population, the facility shall implement any identified additional precautions such as heightened need for supervision, additional safety precautions, or separation from certain other residents. The facility shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety and whether the placement would present management or security problems.

C. For the purposes of this section, vulnerable population means a resident or group of residents who have been assessed to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally (e.g., very young residents; residents who are small in stature; residents who have limited English proficiency; residents who are gay, lesbian, bi-sexual, transgender, or intersex; residents with a history of being bullied or of self-injurious behavior). ]

## **6VAC35-41-570. Residents' mail.**

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section or as permitted by other applicable regulations or by order of a court.

B. In accordance with written procedures, staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate facility interests of order and security, nonlegal mail may be read, censored, or rejected. In accordance with written procedures, the resident shall be notified when incoming or outgoing letters are withheld in part or in full.

C. In the presence of the recipient and in accordance with written procedures, staff may open to inspect for contraband, but shall not read, legal mail. Legal mail shall mean any written material that is sent to or received from a designated class of correspondents, as defined in procedures, which shall include any court, legal counsel, administrators of the grievance system, or administrators of the department, facility, provider, or governing authority.

D. Staff shall not read mail addressed to parents, immediate family members, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public official, or grievance administrators unless permission has been obtained from a court or the facility administrator has determined that there is a reasonable belief that the security of a facility is threatened. When so authorized, staff may read such mail only in the presence of a witness and in accordance with written procedures.

E. Except as otherwise provided [ in this section ], incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays.

F. Cash, stamps, and other specified items may be held for the resident.

G. Upon request, each resident shall be given postage and writing materials for all legal correspondence and at least two other letters per week.

H. Residents shall be permitted to correspond at their own expense with any person or organization provided such correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

I. First class letters and packages received for residents who have been transferred or released shall be forwarded.

J. Written procedure governing correspondence of residents shall be made available to all staff and residents and shall be reviewed annually and updated as needed.

**6VAC35-41-580. Telephone calls.**

Residents shall be permitted reasonable access to a telephone in accordance with procedures that take into account the need for facility security and order, resident behavior, and program objectives.

**6VAC35-41-590. Visitation.**

A. Residents shall be permitted to reasonable visiting privileges, consistent with written procedures, that take into account (i) the need for security and order, (ii) the behavior of individual residents and visitors, (iii) the importance of helping the resident maintain strong family and community ties, (iv) the welfare of the resident [ ~~2.~~  ] and (v) whenever possible, flexible visiting hours.

B. Copies of the written visitation procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation procedures shall be mailed, either electronically or via first class mail, to them by the close of the next business day after admission, unless a copy has already been provided to the individual.

**6VAC35-41-600. Contact with attorneys, courts, and law enforcement.**

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as provided for in 6VAC35-41-570 (residents' mail), by telephone, or in person. [ ~~For the purpose of this section a legal representative is defined as a court appointed or retained attorney or a paralegal, investigator, or other representative from that attorney's office.~~  ]

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, though they may do so voluntarily.

1. Residents' consent shall be obtained prior to any contact with law enforcement.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

3. Each facility shall have procedures for establishing a resident's consent to any such contact and for documenting the resident's decision. The procedures may provide for (i) notification of the parent or legal guardian, as appropriate and applicable, prior to the commencement of questioning; and (ii) opportunity, at the resident's request, to confer with an attorney, parent or guardian, or other person in making the decision whether to consent to questioning.

**6VAC35-41-610. Personal necessities and hygiene.**

A. At admission, each resident shall be provided the following:

1. An adequate supply of personal necessities for hygiene and grooming;

[ ~~2. Size appropriate clothing and shoes for indoor or outdoor wear;~~

~~3. 2. ] A separate bed equipped with a mattress, a pillow, blankets, bed linens, and, if needed, a waterproof mattress cover; and~~

[ ~~4. 3. ] Individual washcloths and towels.~~

B. At the time of issuance, all items shall be clean and in good repair.

C. Personal necessities shall be replenished as needed.

D. The washcloths, towels, and bed linens shall be cleaned or changed, at a minimum, once every seven days [ and more often, if needed ]. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of such linens and table linens.

E. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

**6VAC35-41-620. Showers.**

Residents shall have the opportunity to shower daily, except when a declaration of a state of emergency due to drought conditions has been issued by the Governor or water restrictions have been issued by the locality. Under these exceptional circumstances showers shall be restricted as determined by the facility administrator after consultation with local health officials. The alternate schedule implemented under these exceptional circumstances shall account for cases of medical necessity related to health concerns and shall be in effect only until such time as the water restrictions are lifted.

**6VAC35-41-630. Clothing.**

A. Provision shall be made for each resident to have an adequate supply of clean and [ ~~well-fitting clothes size-appropriate clothing~~  ] and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by individuals of the same age in the community who are engaged in similar activities.

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C. Residents shall have the opportunity to participate in the selection of their clothing.

D. Residents shall be allowed to take personal clothing when leaving the facility.

## **6VAC35-41-640. Residents' privacy.**

Residents shall be provided privacy while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

## **6VAC35-41-650. Nutrition.**

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets [ ~~minimum~~ any applicable federal ] nutritional requirements [ ~~and the U.S. Dietary Guidelines~~ ].

B. Special diets or alternative dietary schedules, as applicable, shall be provided in the following circumstances: (i) when prescribed by a physician or (ii) when necessary to observe the established religious dietary practices of the resident. In such circumstances, the meals shall meet [ ~~the minimum~~ any applicable federal ] nutritional requirements [ ~~of the U.S. Dietary Guidelines~~ ].

C. Menus of actual meals served shall be kept on file for at least six months.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day, except when the facility administrator approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.

F. Providers shall assure that food is available to residents who for documented medical or religious reasons need to eat breakfast before the 15 hours have expired.

## **6VAC35-41-660. School enrollment and study time.**

A. The facility shall make all reasonable efforts to enroll each resident of compulsory school attendance age in an appropriate educational program within five school business days after admission and in accordance with § 22.1-254 of the Code of Virginia and Regulations Governing the Reenrollment of Students Committed to the Department of Juvenile Justice (8VAC20-660), if applicable. Documentation of the enrollment and any attempt to enroll the resident shall be maintained in the resident's record.

B. Each provider shall develop and implement written procedures to ensure that each resident has adequate study time.

## **6VAC35-41-670. Religion.**

A. Residents shall not be required or coerced to participate in or be unreasonably denied participation in religious activities.

B. The provider's procedures on religious participation shall be available to residents and any individual or agency considering placement of an individual in the facility.

## **6VAC35-41-680. Recreation.**

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities, both structured and unstructured;
2. Use of available community recreational resources and facilities;
3. Scheduling of activities so that they do not conflict with meals, religious services, educational programs, or other regular events; and
4. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities;
2. How residents are assessed for suitability for an activity and the supervision provided; and
3. How safeguards for water related activities will be provided, including ensuring that a certified life guard supervises all swimming activities.

C. For all overnight recreational trips away from the facility, the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours;
2. A plan for safekeeping and distribution of medication;
3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;
4. Staff training and experience requirements for each activity;
5. Resident preparation for each activity;
6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

- 7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen and evaluated;
- 8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;
- 9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and
- 10. Documentation of any variations from trip plans and reason for the variation.

D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. Documentation of the written permission shall be kept in the resident's record.

**6VAC35-41-690. Residents' funds.**

A. The provider shall implement written procedures for safekeeping and for recordkeeping of any money that belongs or is provided to residents, including allowances, if applicable.

B. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit, for payments ordered by a court, or to pay restitution for damaged property or personal injury as determined by disciplinary procedures.

**6VAC35-41-700. Fundraising.**

The provider shall not use residents in its fundraising activities without the written permission of the legal guardian and the consent of residents.

Part VI  
Program Operation

Article 1

Admission, Transfer, and Discharge

**6VAC35-41-710. Placement pursuant to a court order.**

When a resident is placed in a facility pursuant to a court order, the following requirements shall be met by maintaining a copy of a court order in the resident's case record:

- 1. 6VAC35-41-730 (application for admission).
- 2. 6VAC35-41-740 (admission procedures).
- 3. 6VAC35-41-750 (written placement agreement).
- 4. 6VAC35-41-780 (emergency admissions).
- 5. 6VAC35-41-810 (discharge procedures).

**6VAC35-41-720. Readmission to a shelter care program.**

A. When a resident is readmitted to a shelter care facility within 30 days from discharge, the following requirements shall not apply:

- 1. 6VAC35-41-730 (application for admission).
- 2. 6VAC35-41-740 (admission procedures).

B. When a resident is readmitted to a shelter care facility within 30 days from discharge, the facility shall:

- 1. Review and update all information on the face sheet as provided in 6VAC35-41-340 (face sheet);
- 2. Complete a health screening in accordance with 6VAC35-41-1200 (health screening at admission);
- 3. Complete required admission and orientation process as provided in 6VAC35-41-760 (admission); and
- 4. Update in the case record any other information regarding the resident that has changed since discharge.

**6VAC35-41-730. Application for admission.**

A. Except for placements pursuant to a court order or resulting from a transfer between residential facilities located in Virginia and operated by the same governing authority, all admissions shall be based on evaluation of an application for admission.

B. Providers shall develop and fully complete [ , ] prior to acceptance for care [ , ] an application for admission that is designed to compile information necessary to determine:

- 1. The educational needs of the prospective resident;
- 2. The mental health, emotional, and psychological needs of the prospective resident;
- 3. The physical health needs, including the immunization needs, of the prospective resident;
- 4. The protection needs of the prospective resident;
- 5. The suitability of the prospective [ resident' resident's ] admission;
- 6. The behavior support needs of the prospective resident; and
- 7. Information necessary to develop a service plan and a behavior support plan.

C. Each facility shall develop and implement written procedures to assess each prospective resident as part of the application process to ensure that:

- 1. The needs of the prospective resident can be addressed by the facility's services;
- 2. The facility's staff are trained to meet the prospective resident's needs; and
- 3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

**6VAC35-41-740. Admission procedures.**

A. Except for placements pursuant to a court order, the facility shall admit only those residents who are determined to be compatible with the services provided through the facility.

B. The facility's written criteria for admission shall include the following:

- 1. A description of the population to be served;
- 2. A description of the types of services offered;
- 3. Intake and admission procedures;

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4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and

5. Description of how educational services will be provided to the population being served.

## **6VAC35-41-750. Written placement agreement.**

A. Except for placements pursuant to a court order or when a resident admits himself to a shelter care facility, each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the legal guardian or placing agency. Routine admission means the admittance of a resident following evaluation of an application for admission and execution of a written placement agreement.

B. The written placement agreements shall:

1. Authorize the resident's placement;
2. Address acquisition of and consent for any medical treatment needed by the resident;
3. Address the rights and responsibilities of each party involved;
4. Address financial responsibility for the placement;
5. Address visitation with the resident; and
6. Address the education plan for the resident and the responsibilities of all parties.

## **6VAC35-41-760. Admission.**

A. Written procedure governing the admission and orientation of residents to the facility shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate;
3. Health screening;
4. Notification of parents and legal guardians, as applicable and appropriate, including of (i) admission, (ii) visitation, and (iii) general information, including how the resident's parent or legal guardian may request information and register concerns and complaints with the facility [ . The facility shall ask the parent or legal guardian regarding whether the resident has any immediate medical concerns or conditions ];
5. Interview with resident to answer questions and obtain information;
6. Explanation to resident of program services and schedules; [ ~~and~~
7. An orientation on the residents' rights, including but not limited to the prohibited actions provided for in 6VAC35-41-560 (prohibited actions); and
7. 8. ] Assignment of resident to a housing unit or room.

B. When a resident is readmitted to a shelter care facility within 30 days from discharge, the facility shall update the information required in subsection A of this section.

## **6VAC35-41-770. Orientation to facility rules and disciplinary procedures.**

A. During the orientation to the facility, residents shall be given written information describing facility rules, the sanctions for rule violations, and the facility's disciplinary process. These shall be explained to the resident and documented by the dated signature of resident and staff.

B. Where a language or literacy problem exists that can lead to a resident misunderstanding the facility rules and regulations, staff or a qualified person under the supervision of staff shall assist the resident.

## **6VAC35-41-780. Emergency admissions.**

Providers accepting emergency admissions, which are the unplanned or unexpected admission of a resident in need of immediate care excluding self-admittance to a shelter care facility or a court ordered placement, shall:

1. Develop and implement written procedures governing such admissions that shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court;
2. Place in each resident's record the order of a court, a written request for care or documentation of an oral request for care, and justification of why the resident is to be admitted on an emergency basis; and
3. Except placements pursuant to court orders, clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

## **6VAC35-41-790. Resident transfer between residential facilities located in Virginia and operated by the same governing authority.**

A. Except for transfers pursuant to a court order, when a resident is transferred from one to another facility operated by the same provider or governing authority the sending facility shall provide the receiving facility, at the time of transfer, a written summary of (i) the resident's progress while at the facility; (ii) the justification for the transfer; (iii) the resident's current strengths and needs; and (iv) any medical needs, medications, and restrictions and, if necessary, instructions for meeting these needs.

B. Except for transfers pursuant to a court order, when a resident is transferred from one to another facility operated by the same provider or governing authority the receiving facility shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities, and criteria for admission;



- 2. Notification to the family, if appropriate; the resident, the placement agency, and the legal guardian; and
- 3. Receipt of the written summary from the sending facility required by subsection A of this section.

**6VAC35-41-800. Placement of residents outside the facility.**

A resident shall not be placed outside the facility prior to the facility obtaining a placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.

**6VAC35-41-810. Discharge procedures.**

A. The provider shall have written criteria for discharge that shall include:

- 1. Criteria for a resident's completing the program that are consistent with the facility's programs and services;
- 2. Conditions under which a resident may be discharged before completing the program; and
- 3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. Residents shall be discharged only to the legal guardian, legally authorized representative, or foster parent with the written authorization of a representative of the legal guardian. [ ~~A resident~~ Residents ] over the age of 17 or who [ ~~has~~ have ] been emancipated may assume responsibility for [ ~~his~~ their ] own discharge.

D. As appropriate and applicable, information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate.

**6VAC35-41-820. Discharge documentation.**

A. Except for residents discharged pursuant to a court order, the case record shall contain the following:

- 1. Documentation that discharge planning occurred prior to the planned discharge date;
- 2. Documentation that discussions with the parent or legal guardian, placing agency, and resident regarding discharge planning occurred prior to the planned discharge date;
- 3. A written discharge plan developed prior to the planned discharge date; and
- 4. As soon as possible, but no later than 30 days after discharge, a comprehensive discharge summary placed in the resident's record and sent to the placing agency. The discharge summary shall review the following:
  - a. Services provided to the resident;
  - b. The resident's progress toward meeting service plan objectives;

- c. The resident's continuing needs and recommendations, if any, for further services and care;
- d. Reasons for discharge and names of persons to whom resident was discharged;
- e. Dates of admission and discharge; and
- f. Date the discharge summary was prepared and the signature of the person preparing it.

B. When a resident is discharged pursuant to a court order, the case record shall contain a copy of the court order.

Article 2  
Programs and Services

**6VAC35-41-830. [ ~~Operational procedures. (Reserved.)~~**

~~Current operational procedures shall be accessible to all staff. ]~~

**6VAC35-41-840. Structured programming.**

A. Each facility shall implement a comprehensive, planned, and structured daily routine, including appropriate supervision designed to:

- 1. Meet the residents' physical and emotional needs;
- 2. Provide protection, guidance, and supervision;
- 3. Ensure the delivery of program services; and
- 4. Meet the objectives of any individual service plan.

B. Each facility shall have goals, objectives, and strategies consistent with the facility's mission and program objectives utilized when working with all residents until the residents' individualized service plans are developed. These goals, objectives, and strategies shall be provided to the residents in writing during orientation to the facility.

C. Residents shall be allowed to participate in the facility's programs, as applicable, upon admission.

**6VAC35-41-850. Daily log.**

A. A daily communication log shall be, in accordance with facility procedures, maintained to inform staff of significant happenings or problems experienced by residents.

B. The date and time of the entry and the identity of the individual making each entry shall be recorded.

C. If the facility records log book-type information on a computer, all entries shall post the date, time, and identity of the person making an entry. The computer shall prevent previous entries from being overwritten.

**6VAC35-41-860. Individual service plan.**

A. An individual service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter. The initial individual service plan shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff.

B. Individual service plans shall describe in measurable terms the:

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1. Strengths and needs of the resident;
2. Resident's current level of functioning;
3. Goals, objectives, and strategies established for the resident including a behavior support plan, if appropriate;
4. Projected family involvement;
5. Projected date for accomplishing each objective; and
6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

C. Each service plan shall include the date it was developed and the signature of the person who developed it.

D. The service plan shall be reviewed within 60 days of the development of the plan and within each 90-day period thereafter. The individual service plan shall be revised as necessary. Any changes to the plan shall be made in writing. All participants shall receive copies of the revised plan.

E. The resident and facility staff shall participate in the development of the individual service plan.

F. The (i) supervising agency and (ii) resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

G. Copies of the individual service plan shall be provided to the (i) resident; (ii) parents or legal guardians, as appropriate and applicable, and (iii) the placing agency.

## **6VAC35-41-870. Quarterly reports.**

A. Except when a resident is placed in a shelter care program, the resident's progress toward meeting his individual service plan goals shall be reviewed and a progress report shall be prepared within 60 days of the development of the plan and within each 90-day period thereafter and shall review the status of the following:

1. Resident's progress toward meeting the plan's objectives;
2. Family's involvement;
3. Continuing needs of the resident;
4. Resident's progress towards discharge; and
5. Status of discharge planning.

B. Each quarterly progress report shall include the date it was developed and the signature of the person who developed it.

C. All quarterly progress reports shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff.

## **6VAC35-41-880. Therapy.**

Therapy, if provided, shall be provided by an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is licensure eligible and working

under the supervision of a licensed therapist unless exempted from these requirements under the Code of Virginia.

## **6VAC35-41-890. Community relationships.**

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community.

B. In addition to the requirements of 6VAC35-41-290 (background checks for volunteers or interns), written procedures shall govern how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. Each provider shall develop and implement written procedures for promoting positive relationships with the neighbors that shall be approved by the department.

## **6VAC35-41-900. Resident visitation at the homes of staff.**

Resident visitation at the homes of staff is prohibited unless written permission from the (i) resident's parent or legal guardian, as applicable and appropriate, (ii) the facility administrator, and (iii) the placing agency is obtained before the visitation occurs. The written permission shall be kept in the resident's record.

## Article 3 Supervision

## **6VAC35-41-910. Additional assignments of direct care staff.**

If direct care staff assume nondirect care responsibilities, such responsibilities shall not interfere with the staff's direct care duties.

## **6VAC35-41-920. Staff supervision of residents.**

~~[ A. Staff shall provide 24 hour awake supervision seven days a week.~~

~~B. A.]~~ No member of the direct care staff shall be on duty and responsible for the direct care of residents more than six consecutive days without a rest day, except in an emergency. For the purpose of this section, a rest day shall mean a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the operation of the facility.

~~[ C. B.]~~ Direct care staff shall have an average of at least two rest days per week in any four-week period.

~~[ D. C.]~~ Direct care staff shall not be on duty more than 16 consecutive hours, except in an emergency.

~~[ E. D.]~~ There shall be at least one trained direct care [ worker staff member ] on duty and actively supervising residents at all times that one or more residents are present.

~~[ F. E.]~~ Whenever residents are being supervised by staff there shall be at least one staff person present with a current

basic certification in standard first aid and a current certificate in cardiopulmonary resuscitation issued by a recognized authority.

[ ~~G. F.~~ ] The provider shall develop and implement written procedures that address staff supervision of residents including contingency plans for resident illnesses, emergencies, off-campus activities, and resident preferences. These procedures shall be based on the:

1. Needs of the population served;
2. Types of services offered;
3. Qualifications of staff on duty; and
4. Number of residents served.

**6VAC35-41-930. Staffing pattern.**

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, facility sponsored activities, except that independent living programs shall have at least one direct care staff member awake, on duty, and responsible for supervision of every 15 residents on the premises or participating in off-campus, facility sponsored activities.

B. During the hours that residents are scheduled to sleep there shall be no less than one direct care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping. This requirement does not apply to approved independent living programs.

D. On each floor where residents are sleeping, there shall be at least one direct care staff member awake and on duty for every 30 residents or portion thereof.

**6VAC35-41-940. Outside personnel working in the facility.**

A. Facility staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents in the facility.

B. Adult inmates shall not work in the immediate presence of any resident and shall be monitored in a way that there shall be no direct contact between or interaction among adult inmates and residents.

Part VII  
Work Programs

**6VAC35-41-950. Work and employment.**

A. Assignment of chores that are paid or unpaid work assignments shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the facility administrator with the knowledge and consent of the [ parent or ] legal guardian [ , as appropriate and applicable ].

D. In both work assignments and employment the facility administrator shall evaluate the appropriateness of the work and the fairness of the pay.

Part VIII  
Independent Living Programs

**6VAC35-41-960. Independent living programs.**

A. Independent living programs shall be a competency based program, specifically approved by the board to provide the opportunity for the residents to develop the skills necessary to become independent decision makers, to become self-sufficient adults, and to live successfully on their own following completion of the program.

B. Independent living programs shall have a written description of the curriculum and methods used to teach living skills, which shall include finding and keeping a job, managing personal finances, household budgeting, hygiene, nutrition, and other life skills.

**6VAC35-41-970. Independent living programs curriculum and assessment.**

A. Each independent living program must demonstrate that a structured program using materials and curriculum approved by the board is being used to teach independent living skills. The curriculum must include information regarding each of the areas listed in subsection B of this section.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the department. The assessment must cover the following areas:

1. Money management and consumer awareness;
2. Food management;
3. Personal appearance;
4. Social skills;
5. Health and sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning and career planning;
9. Job seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills and social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

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C. The resident's individualized service plan shall include, in addition to the requirements found in 6VAC35-41-860 (individual service plan), goals, objectives, and strategies addressing each of the areas listed in subsection B of this section, as applicable.

## **6VAC35-41-980. Employee training in independent living programs.**

Each independent living program shall develop and implement procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the training shall be kept in the employee's staff record.

## **6VAC35-41-990. Medication management in independent living programs.**

If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written procedures that include:

1. Training for the resident in self administration and recognition of side effects;
2. Method for storage and safekeeping of medication;
3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and
4. Method for documenting the administration of medication.

## **6VAC35-41-1000. Nutrition procedure in independent living programs.**

Each independent living program shall develop and implement written procedures that ensure that each resident is receiving adequate nutrition as required in 6VAC35-41-650 A, B, and C (nutrition).

### Part IX

#### Wilderness Programs and Adventure Activities

## **6VAC35-41-1010. Wilderness program.**

A. The provider must obtain approval by the board prior to operating a primitive camping program.

B. Any wilderness program must meet the following conditions: (i) maintain a nonpunitive environment; (ii) have an experience [ ~~curricula~~ curriculum ]; (iii) accept residents only nine years of age or older who cannot presently function at home, in school, or in the community.

C. Any wilderness work program or wilderness work camp program shall have a written program description covering:

1. Its intended resident population;
2. How work assignments, education, vocational training, and treatment will be interrelated;
3. The length of the program;

4. The type and duration of treatment and supervision to be provided upon release or discharge; and

5. The program's behavioral expectations, incentives, and sanctions.

## **6VAC35-41-1020. Wilderness programs or adventure activities.**

A. All wilderness programs and providers that take residents on wilderness or adventure activities shall develop and implement procedures that include:

1. Staff training and experience requirements for each activity;
2. Resident training and experience requirements for each activity;
3. Specific staff to resident ratio and supervision plan appropriate for each activity, including sleeping arrangements and supervision during night time hours;
4. Plans to evaluate and document each participant's physical health throughout the activity;
5. Preparation and planning needed for each activity and time frames;
6. Arrangement, maintenance, and inspection of activity areas;
7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness or adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;
8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses, or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;
9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket, or a flotation device, that is appropriate to the adventure activity in which the resident is engaged;
10. Plans for food and water supplies and management of these resources;
11. Plans for the safekeeping and distribution of medication;
12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;
13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and
14. Review of trip plans by the trip coordinator.

B. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall be trained in a wilderness first aid course.

**6VAC35-41-1030. Initial physical for wilderness programs or adventure activities.**

Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and
2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.

**6VAC35-41-1040. Physical environment of wilderness programs or adventure activities.**

- A. Each resident shall have adequate personal storage area.
- B. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.
- C. Artificial lighting shall be provided in a safe manner.
- D. All areas of the campsite shall be lighted for safety when occupied by residents.
- E. A telephone or other means of communication is required at each area where residents sleep or participate in programs.
- F. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

**6VAC35-41-1050. Sleeping areas of wilderness programs or adventure activities.**

- A. In lieu of or in addition to dormitories, cabins, or barracks for housing residents, primitive campsites may be used.
- B. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.
- C. A separate bed, bunk, or cot shall be made available for each person.
- D. A mattress cover shall be provided for each mattress.
- E. Bedding shall be clean, dry, sanitary, and in good repair.
- F. Bedding shall be adequate to ensure protection and comfort in cold weather.
- G. Sleeping bags, if used, shall be fiberfill and rated for 0°F.
- H. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.
- I. Staff of the same sex may share a sleeping area with the residents.

**6VAC35-41-1060. Personal necessities in wilderness programs or adventure activities.**

- A. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.
- B. Sturdy, water resistant, outdoor footwear shall be provided for each resident.

**6VAC35-41-1070. Trip or activity coordination for wilderness programs or adventure activities.**

- A. All wilderness programs and facilities that take residents on wilderness or adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.
  1. This person must have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.
  2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.
  3. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's procedure regarding each wilderness or adventure activity to take place during the trip.
  4. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's procedure regarding each wilderness or adventure activity to take place during the trip.
- B. The trip coordinator shall conduct a post trip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.
- C. The trip coordinator will be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures are updated to reflect improvements needed.
- D. A trip folder will be developed for each wilderness or adventure activity conducted away from the facility and shall include:
  1. Medical release forms including pertinent medical information on the trip participants;
  2. Phone numbers for administrative staff and emergency personnel;
  3. Daily trip logs;
  4. Incident reports;
  5. Swimming proficiency list if trip is near water;
  6. Daily logs;
  7. Maps of area covered by the trip; and
  8. Daily plans.

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E. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability in one of two classifications: swimmer and nonswimmer. This shall be documented in the resident's record and in the trip folder.

F. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and
2. A lifesaving throwing device.

## Part X

### Family Oriented Group Homes

#### **6VAC35-41-1080. Requirements of family oriented group home systems.**

Family oriented group home systems shall have written procedures for:

1. Setting the number of residents to be housed in each home and room of the home and prohibiting individuals less than 18 years of age and individuals older than 17 years of age from sharing sleeping rooms without specific approval from the facility administrator;
2. Providing supervision of and guidance for the family oriented group home parents and relief staff;
3. Admitting and orienting residents;
4. Preparing a treatment plan for each resident within 30 days of admission or 72 hours in the case of a shelter care facility, and reviewing the plan quarterly;
5. Providing appropriate programs and services from intake through release;
6. Providing residents with spending money;
7. Managing resident records and releasing information;
8. Providing medical and dental care to residents;
9. Notifying parents and guardians, as appropriate and applicable, the placing agency, and the department of any serious incident as specified in written procedures;
10. Making a program supervisor or designated staff person available to residents and house parents 24 hours a day; and
11. Ensuring the secure control of any firearms and ammunition in the home.

#### **6VAC35-41-1090. Examination by physician.**

Each resident admitted to a family oriented group home shall have a physical examination including tuberculosis screening within 30 days of admission unless the resident was examined within six months prior to admission to the program.

#### **6VAC35-41-1100. Requirements of family [ oriented ] group homes.**

Each family oriented group home shall have:

1. A fire extinguisher, inspected annually;
2. Smoke alarm devices in working condition;
3. Alternative methods of escape from second story;
4. Modern sanitation facilities;
5. Freedom from physical hazards;
6. A written emergency plan that is communicated to all new residents at orientation;
7. An up-to-date listing of medical and other emergency resources in the community;
8. A separate bed for each resident, with clean sheets and linens weekly;
9. A bedroom that is well illuminated and ventilated; is in reasonably good repair; is not a hallway, unfinished basement or attic; and provides conditions for privacy;
10. A place to store residents' clothing and personal items;
11. Sanitary toilet and bath facilities that are adequate for the number of residents;
12. A safe and clean place for indoor and outdoor recreation;
13. Adequate furniture;
14. Adequate laundry facilities or laundry services;
15. A clean and pleasant dining area;
16. Adequate and nutritionally balanced meals; and
17. Daily provision of clean clothing and articles necessary for maintaining proper personal hygiene.

#### **6VAC35-41-1110. Other applicable regulations.**

Each family oriented group home shall also be subject to and comply with the requirements of the following provisions of this chapter:

1. 6VAC35-41-180 (employee and volunteer background checks);
2. 6VAC35-41-190 (required initial orientation);
3. 6VAC35-41-200 (required initial training); and
4. 6VAC35-41-210 (required retraining).

## Part XI

### Respite Care

#### **6VAC35-41-1120. Definition of respite care.**

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

**6VAC35-41-1130. Admission and discharge from respite care.**

A. Acceptance of an individual as eligible for respite care by a respite care facility is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

B. A respite care facility shall discharge a resident when the legal guardian no longer intends to use the facility's services.

**6VAC35-41-1140. Updating health records in respite care.**

Respite care facilities shall update the information required by 6VAC35-41-1170 B (health care procedures) at the time of each stay at the facility.

Part XII

Health Care Services

**6VAC35-41-1150. Definitions applicable to health care services.**

"Health authority" means the individual, government authority, or health care contractor responsible for organizing, planning, and monitoring the timely provision of appropriate health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services, consistent with applicable statutes and regulations, prevailing community standards, and medical ethics.

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including, but not limited to, all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering [ ~~health~~ health ] care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders.

**6VAC35-41-1160. Provision of health care services.**

Treatment by nursing personnel shall be performed pursuant to the laws and regulations governing the practice of nursing within the Commonwealth. Other [ ~~health-trained~~ health trained ] personnel shall provide care within their level of training and certification.

**6VAC35-41-1170. Health care procedures.**

A. The provider shall have and implement written procedures for promptly:

1. Arranging for the provision of medical and dental services for health problems identified at admission;

2. Arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Arranging for emergency medical and mental health care services, as appropriate and applicable, for each resident as provided by statute or by the agreement with the resident's legal guardian;

4. Arranging for emergency medical and mental health care services, as appropriate and applicable, for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;

2. Name, address, and telephone number of a relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number;

4. Information concerning:

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use;

d. Significant past and present medical problems; and

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.

**6VAC35-41-1180. [ ~~Health-trained~~ Health trained ] personnel.**

A. [ ~~Health-trained~~ Health trained ] personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

B. The facility shall retain documentation of the training received by [ ~~health-trained~~ health trained ] personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

**6VAC35-41-1190. Consent to and refusal of health care services.**

A. The knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free choice (informed consent) to health

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care shall be obtained from the resident, parent, guardian, or legal custodian as required by law.

B. The resident, parent, guardian, or legal custodian, as applicable, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure and (ii) the alternatives to it.

C. Residents may refuse in writing medical treatment and care. This subsection does not apply to medication refusals that are governed by 6VAC35-41-1280 (medication).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

## **6VAC35-41-1200. Health screening at admission.**

The facility shall require that:

1. To prevent newly arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by health care personnel or [ ~~health trained staff, using a health screening form that has been approved by the facility's health authority~~ health trained staff ]. As necessary to maintain confidentiality, all or a portion of the interview shall be conducted with the resident without the presence of the parent or guardian.

2. Residents admitted to the facility who pose a health or safety threat to themselves or others [ ~~are not~~ shall not be ] admitted to the facility's general population but provision shall be made for them to receive comparable services.

3. Immediate health care is provided to residents who need it.

## **6VAC35-41-1210. Tuberculosis screening.**

A. Within seven days of placement each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

B. A screening assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall [ ~~comply with guidelines and recommendations of (Screening for TB Infection and Disease, Policy TB 99-001)~~ be performed consistent with any current recommendations of ] the Virginia Department of Health, Division of Tuberculosis Prevention and Control [ and the federal Department of Health and Human Services Centers for Disease Control and Prevention ] for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

## **6VAC35-41-1220. Medical examinations and treatment.**

A. Except for residents placed in a shelter care facility, each resident accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no later than seven days following admission, except (i) the report of an

examination within the preceding 12 months shall be acceptable if a resident transfers from one facility licensed or certified by a state agency to another and (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available.

B. Each resident shall have an annual physical examination by or under the direction of a licensed physician and an annual dental examination by a licensed dentist.

## **6VAC35-41-1230. Infectious or communicable diseases.**

A. A resident with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

The requirements of this subsection shall not apply to shelter care facilities.

B. The facility shall implement written procedures approved by a medical professional that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;

2. Require staff training in standard precautions, initially and annually thereafter; and

3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

## **6VAC35-41-1240. Suicide prevention.**

Written procedure shall provide (i) for a suicide prevention and intervention program, developed in consultation with a qualified medical or mental health professional, and (ii) for all direct care staff to be trained in the implementation of the program.

## **6VAC35-41-1250. Residents' health records.**

A. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

B. The resident's active health records (i) shall be kept confidential and inaccessible from unauthorized persons, (ii) shall be readily accessible in case of emergency, and (iii) shall be made available to authorized staff consistent with applicable state and federal statutes and regulations.

C. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;



- c. Hearing exam;
  - d. General physical condition including documentation of apparent freedom from communicable disease [ , ] including tuberculosis;
  - e. Allergies, chronic conditions, and handicaps, if any;
  - f. Nutritional requirements including special diets, if any;
  - g. Restrictions on physical activities, if any; and
  - h. Recommendations for further treatment, immunizations, and other examinations indicated;
2. Date of the physical examination; and
  3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

D. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to shelter care facilities and respite care facilities.

E. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

F. Each resident's health record shall include or document the facility's efforts to obtain treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

**6VAC35-41-1260. First aid kits.**

A. A well stocked first aid kit shall be maintained [ , with an inventory of its contents, ] and readily accessible for dealing with minor injuries and medical emergencies.

B. First aid kits should be monitored in accordance with established facility procedures to ensure kits are maintained, stocked, and ready for use.

**6VAC35-41-1270. Hospitalization and other outside medical treatment of residents.**

A. When a resident needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported safely; and
2. A parent or legal guardian, a staff member, or a law-enforcement officer, as appropriate, shall accompany the resident and stay at least during admission.

B. If a parent or legal guardian does not accompany the resident to the hospital or other medical treatment outside the facility, the parent or legal guardian shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.

**6VAC35-41-1280. Medication.**

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, unless otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication. All staff who administer medication shall complete an annual refresher medication training.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders signed by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the [ ~~standards of practice outlined in the current medication aide training curriculum approved by the Board of Nursing~~ requirements of § 54.2-2408 of the Code of Virginia and the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) ].

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed or most recently refilled;
2. Drug name;
3. Schedule for administration;
4. Strength;
5. Route;
6. Identity of the individual who administered the medication; and
7. Dates the medication was discontinued or changed.

H. In the event of a medication incident or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. [ ~~For the purpose of this section a~~ A ] medical incident [ ~~means shall mean~~ ] an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to an incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the

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medication is administered through an improper method. A medication error does not include a resident's refusal of appropriately offered medication.

I. Written procedures shall provide for (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and making any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a health care professional. Documentation of this approval shall be retained.

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals that shall address:

1. Manner by which medication refusals are documented, and
2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

## Part XIII

### Behavior Support and Management

#### **6VAC35-41-1290. Behavior management.**

A. Each facility shall implement a behavior management program. Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, and residents' and employees' safety and security.

B. Written procedures governing this program shall provide the following:

1. A [ ~~listing~~ description ] of the rules of conduct and behavioral expectations for the resident;
2. Orientation of residents as provided in 6VAC35-41-770 (orientation to facility rules and disciplinary procedures);
3. [ ~~The definition and listing~~ A description ] of a system of privileges and sanctions that is used and available for use. [ ~~Sanctions shall be listed in the order of their relative degree of restrictiveness and shall contain alternative to room confinement as a sanction.~~ ]
4. Specification of the staff members who may authorize the use of [ ~~each privilege~~ privileges ] and [ ~~sanction~~ sanctions ]; [ and ]

5. Documentation requirements when [ ~~privileges are applied and~~ ] sanctions are imposed [ ~~; and~~

6. ~~Specification of the processes for implementing such procedures~~ ].

C. Written information concerning the procedures of the provider's behavior management program shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;
2. Placing agencies within 72 hours following the resident's admission; and
3. Legal guardians within 72 hours following the resident's admission.

D. When substantive revisions are made to procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and
2. Legal guardians and placing agencies prior to implementation.

E. The facility administrator or designee shall review the behavior management program and procedures at least annually to determine appropriateness for the population served.

F. Any time residents are present, staff must be present who have completed all trainings in behavior management.

#### **6VAC35-41-1300. Behavior support.**

A. Each facility shall have a procedure regarding behavior support plans for use with residents who need supports in addition to those provided in the facility's behavior management program that addresses the circumstances under which such plans shall be utilized. Such plans shall support the resident's self-management of his own behavior and shall include:

1. Identification of positive and problem behavior;
2. Identification of triggers for behaviors;
3. Identification of successful intervention strategies for problem behavior;
4. Techniques for managing anger and anxiety; and
5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;
2. Legal guardian, if applicable;
3. Resident's parents, if applicable;
4. Program director;
5. Placing agency staff; and
6. Other applicable individuals.

C. Prior to working alone with an assigned resident, each staff member shall review and be prepared to implement the resident's behavior support plan.

**6VAC35-41-1310. Timeout.**

A. A facility may use a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided [ ~~(time-out)~~ (timeout) ] under the following conditions:

1. The provider shall develop and implement written procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout.
2. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.
3. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it.
4. A resident in timeout shall be able to communicate with staff.
5. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

B. Use of timeout and staff checks on the residents shall be documented.

**6VAC35-41-1320. Physical restraint.**

A. Physical restraint shall be used as a last resort only after less restrictive interventions have failed or to control residents whose behavior poses a risk to the safety of the resident, others, or the public.

1. Staff shall use the least force deemed reasonable to be necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with the intent to inflict injury.
2. Staff may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.
3. Physical restraint [ ~~may shall~~ ] be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint.
4. [ ~~For the purpose of this section, physical~~ Physical ] restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.

B. Written procedures governing use of physical restraint shall include:

1. The staff position who will write the report and timeframe;
2. The staff position who will review the report and timeframe; and
3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

C. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

D. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date and time of the incident;
2. Staff involved;
3. Justification for the restraint;
4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;
5. Duration;
6. Description of method or methods of physical restraint techniques used;
7. Signature of the person completing the report and date; and
8. Reviewer's signature and date.

**6VAC35-41-1330. Chemical agents.**

Staff are prohibited from using pepper spray and other chemical agents to manage resident behavior.

[ FORMS (6VAC35-41)

~~Health Services Intake Medical Screening, HS 1/10;~~

~~TB Risk Assessment Form, TB 512 Form (rev. 2/05); Virginia Department of Health Division of TB Control;~~

~~Instructions for the TB Risk Assessment Form, TB 512-Instructions (rev. 2/05); Virginia Department of Health Division of TB Control. ]~~

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-41)

[ ~~Screening for TB Infection and Disease, Policy TB 99-001 (www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Policies/screening.htm), Virginia Department of Health;~~

~~A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act, Developed by the Virginia Department of Social Services, Approved as Revised by the Board of Nursing, July 1996, September 2000.~~

[Compliance Manual - Group Homes and Halfway Houses, effective January 1, 2014, Virginia Department of Juvenile Justice \]](#)

V.A.R. Doc. No. R09-1817; Filed July 18, 2013, 4:46 p.m.

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# Regulations

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## Final Regulation

**Title of Regulation:** 6VAC35-71. Regulation Governing Juvenile Correctional Centers (adding 6VAC35-71-10 through 6VAC35-71-1270).

**Statutory Authority:** §§ 16.1-309.9, 66-10, and 66-25.1 of the Code of Virginia.

**Effective Date:** January 1, 2014.

**Agency Contact:** Barbara Peterson-Wilson, Regulatory Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 588-3902, FAX (804) 371-6490, or email barbara.peterson-wilson@djj.virginia.gov.

### Summary:

*The amendments consolidate the provisions of two current regulations (6VAC35-51 and 6VAC35-140) into a new regulation (6VAC35-71) that will govern juvenile correctional centers. Most provisions in the new regulation will not vary in any substantive way from those mandated by current regulation, board policy, or law. However, several new provisions include: (i) requiring each juvenile correctional center to have a community liaison and allowing each facility to form a community advisory committee; (ii) requiring all direct care staff to maintain current certification in CPR and first aid; (iii) no longer requiring newly constructed facilities to have separate bathrooms from those that are available for residents to use; (iv) changing requirements for resident sleeping areas to take into account older facilities that do not have a physical room configuration that allows them to comply with current regulations; (v) requiring copies of facilities' visitation procedures to be mailed to parents of new residents by the end of the business day immediately following the resident's admission; (vi) allowing the requirement for residents to shower daily to be modified if necessary to maintain security of the facility so long as the modification is approved by the superintendent of the facility or a mental health provider; (vii) instituting an exception to the rule the requires staff to give residents privacy bathing, dressing, or using the bathroom so that suicidal residents can be supervised at all times; (viii) allowing exceptions to normal meal rules, so long as the substitute meals meet nutritional requirements, on the advice of a mental health provider or at the order of the superintendent of the facility if needed to maintain facility security; and (ix) requiring facilities to provide two hot meals a day.*

*The recommended changes since the proposed stage are in response to the public comments received. The majority of the changes relate to the adoption of requirements pertaining to the department's zero-tolerance policy regarding abuse in juvenile correctional centers in the training and residents' rights sections. Other amendments relate to the reporting of serious incidents and suspected child abuse and neglect, staff*

*and volunteer training and retraining, searches of residents, residents' rights, room confinement, restraints, and provisions to ensure that the facilities are following the current recommendations or guidance from the applicable agencies.*

*The following is a summary of the changes made to the regulation since the proposed stage:*

- 1. (6VAC35-71-30): Adds the requirement that the certificate be posted in a conspicuous place.*
- 2. (6VAC35-71-60): Adds the requirements that (i) all reports of serious incidents be made "as soon as practicable, but no later than" 24 hours after the incident and "in accordance with department procedures" and (ii) any incident involving the death of a resident be reported "without undue delay."*
- 3. (6VAC35-71-70): Adds a requirement that procedures include "measures to be taken to ensure the safety of the resident and staff" when child abuse or neglect is suspected.*
- 4. (6VAC35-71-75): Adds clarifying language that reporting of criminal activity includes any occurrence of physical abuse, sexual abuse, or sexual harassment.*
- 5. (6VAC35-71-80): Adds the requirement that the grievance procedure be posted in an area easily accessible to parents and legal guardians.*
- 6. (6VAC35-71-110): Deletes the requirement that the juvenile correctional center comply with department procedures requiring reports concerning major incidents, population data, employee vacancies, and other information as needed or required by department procedures.*
- 7. (6VAC35-71-160): Amends the required initial training requirements to clarify that such training must include the actions that are prohibited in facilities, that is, abuse, discrimination, unsanitary living conditions, and denial of health care; deletes the requirement regarding health care training; and adds the requirement that staff be trained in recognizing the signs and symptoms and knowledge of actions required in medical emergencies as well as in adolescent development.*
- 8. (6VAC35-71-170): Amends the retraining requirements to clarify that such training must include the actions that are prohibited in facilities, such as abuse, discrimination, unsanitary living conditions, and denial of health care.*
- 9. (6VAC35-71-200): Deletes the requirement that a staff member, whose job involves transporting residents, must maintain a valid driver's license and must report any change in the license status.*
- 10. (6VAC35-71-240): Adds a requirement that training for volunteers and interns include the actions prohibited in facilities, that is, abuse, discrimination, unsanitary living conditions, and denial of health care.*

11. (6VAC35-71-390): Adds medical waste as materials that must be stored, used, and disposed of in appropriate receptacles in accordance with applicable federal, state, and local requirements.

12. (6VAC35-71-470): Clarifies that each juvenile correctional center should follow written security procedures related to searches of buildings, premises, and persons.

13. (6VAC35-71-480): Adds the requirement that all patdown and frisk searches must be conducted by staff of the same sex of the resident being searched, except in emergencies.

14. (6VAC35-71-550): Clarifies that any form of "physical abuse, sexual abuse, or sexual harassment" is prohibited and adds a general statement that discrimination in violation of state or federal constitutions, laws, or regulations is prohibited, which replaces a statement with enumerated classes.

15. (6VAC35-71-555): Adds a section requiring the facilities to assess whether a resident is a vulnerable population and at risk for physical or emotional harm and take preventative steps as needed to ensure the resident's safety and well-being.

16. (6VAC35-71-680): Adds requirement that residents be oriented on their rights, including but not limited to the prohibited actions.

17. (6VAC35-71-760): Adds the requirement to provide parents with written notice and the opportunity to participate in any scheduled classification and staffing team meetings at the Reception and Diagnostic Center.

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

**CHAPTER 71**  
**REGULATION GOVERNING JUVENILE**  
**CORRECTIONAL CENTERS**

**Part I**  
**General Provisions**

**6VAC35-71-10. Definitions.**

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

"Annual" means within 13 months of the previous event or occurrence.

"Board" means Board of Juvenile Justice.

"Case record" or "record" means written or electronic information regarding a resident and the resident's family, if applicable, maintained in accordance with written procedures.

"Contraband" means any item possessed by or accessible to a resident or found within a juvenile correctional center or on its premises that (i) is prohibited by statute, regulation, or

department procedure; (ii) is not acquired through approved channels or in prescribed amounts; or (iii) may jeopardize the safety and security of the juvenile correctional center or individual residents.

"Department" means the Department of Juvenile Justice.

"Direct care" means the time during which a resident who is committed to the department pursuant to § 16.1-272 or 16.1-285.1, or subsection A 14 or 17 of § 16.1-278.8 of the Code of Virginia is under the supervision of staff in a juvenile correctional center operated by or under contract with the department.

"Direct care staff" means the staff whose primary job responsibilities are for (i) maintaining the safety, care, and well-being of residents; (ii) implementing the structured program of care and the behavior management program; and (iii) maintaining the security of the facility.

"Direct supervision" means the act of working with residents who are not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, taking of hostages, major disturbances, escape, and bomb threats. Emergency does not include regularly scheduled employee time off or other situations that could be reasonably anticipated.

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery, including but not limited to all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties, such as administering [ ~~health~~ health ] care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders. ]

"Individual service plan" or "service plan" means a written plan of action developed, revised as necessary, and reviewed at intervals, to meet the needs of a resident. The individual service plan specifies (i) measurable short-term and long-term goals; (ii) the objectives, strategies, and time frames for

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reaching the goals; and (iii) the individuals responsible for carrying out the plan.

"Juvenile correctional center," "JCC," or "facility" means a public or private facility, operated by or under contract with the Department of Juvenile Justice, where 24-hour per day care is provided to residents under the direct care of the department.

"Living unit" means the space in a juvenile correctional center in which a particular group of residents [ reside resides ] that contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its design, a building may contain one living unit or several separate living units.

"On duty" means the period of time, during an employee's scheduled work hours, during which the employee is responsible for the direct supervision of one or more residents in performance of that employee's position's duties.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of a resident, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a resident regularly resides; (iii) a person judicially appointed as a legal guardian of a resident; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Premises" means the tracts of land on which any part of a juvenile correctional center is located and any buildings on such tracts of land.

"Reception and Diagnostic Center" or "RDC" means the juvenile correctional center that serves as the central intake facility for all individuals committed to the department. The Reception and Diagnostic Center's primary function is to orient, evaluate, and classify each resident before being assigned to a juvenile correctional center or alternative placement.

"Regulatory authority" means the board or the department if designated by the board.

"Resident" means an individual, either a minor or an adult, who is committed to the department and resides in a juvenile correctional center.

"Rules of conduct" means a listing of a juvenile correctional center's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, about behaviors that are not permitted, and about the sanctions that may be applied when impermissible behaviors occur.

"Superintendent" means the individual who has the responsibility for the on-site management and operation of a juvenile correctional center on a regular basis.

[ "Volunteer" or "intern" means any individual or group who of their own free will provides goods and services without competitive compensation. ]

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or in electronic form.

## **6VAC35-71-20. Previous regulations terminated.**

This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities, (6VAC 35-51), and the Standards for Juvenile Residential Facilities, (6VAC35-140), for the regulation of all JCCs as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for secure detention facilities and group homes, regulated by the board, until such time as the board adopts new regulations related thereto.

## **6VAC35-71-30. Certification.**

A. The JCC shall maintain a current certification demonstrating compliance with the provisions of the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20).

B. The JCC shall demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations as interpreted by the assessment and compliance measures approved in accordance with board regulations or department procedures.

C. Documentation necessary to demonstrate compliance with this chapter shall be maintained for a minimum of three years.

[ D. The current certificate shall be posted at all times in a place conspicuous to the public. ]

## **6VAC35-71-40. Relationship to the regulatory authority.**

All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the regulatory authority.

## **6VAC35-71-50. Variances.**

A. Board action may be requested by the superintendent to relieve a JCC from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, either permanently or for a determined period of time, as provided in the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20) and in accordance with written procedures.

B. A variance may not be implemented prior to approval of the board.

## **[ 6VAC35-71-55. Operational procedures.**

Current operational procedures shall be accessible to all staff. ]

## **6VAC35-71-60. Serious incident reports.**

A. The following events shall be reported [ ~~within~~ as soon as practicable, but no later than ] 24 hours [ after the incident,

and in accordance with department procedures ] to the director or his designee:

1. Any serious illness, incident, injury, or accident involving injury [ ~~or death~~ ] of a resident;
2. Any absence from the facility without permission; and
3. All other situations required by written procedures.

B. As appropriate and applicable, the facility shall, [ ~~within~~ as soon as practicable, but no later than ] 24 hours [ ~~after the incident,~~ ] and in accordance with written procedures, report the incidents listed in subsection A of this section to (i) the parent or legal guardian and (ii) the supervising court service unit or agency.

C. [ ~~Any incident involving the death of a resident shall be reported to the individuals specified in subsections A and B of this section without undue delay.~~ ]

D. ] The facility shall prepare and maintain a written report of the events listed in [ ~~subsection~~ subsections ] A [ ~~and C~~ ] of this section which shall contain the following information:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name or identifying information of the person who made the report to the supervising agency and to the parent or legal guardian; and
6. The name or identifying information of the person to whom the report was made, including any law enforcement or child protective service personnel.

[ ~~D.~~ E. ] The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

[ ~~E.~~ F. ] In addition to the requirements of this section, any suspected child abuse and neglect shall be governed by 6VAC35-71-70 (suspected child abuse or neglect).

**6VAC35-71-70. Suspected child abuse or neglect.**

A. When there is reason to suspect that a resident is an abused or neglected child, the matter shall be reported immediately to the local department of social services as required by § 63.2-1509 of the Code of Virginia and in accordance with written procedures.

B. Any case of suspected child abuse or neglect occurring at the JCC, occurring on a JCC sponsored event or excursion, or involving JCC staff shall be reported within 24 hours, in accordance with written procedures, to (i) the director or his designee, (ii) the court services unit, and (iii) the resident's parent or legal guardian, as appropriate and applicable.

C. When a case of suspected child abuse or neglect is reported to child protective services a record shall be maintained at the facility that contains the following information:

1. The date and time the suspected abuse or neglect occurred;
2. A brief description of the suspected abuse or neglect;
3. Action taken as a result of the suspected abuse or neglect; and
4. The name or identifying information of the person to whom the report was made at the local child protective services unit.

D. The resident's record shall contain a written reference that a report was made.

E. Written procedures shall be accessible to staff regarding the following:

1. Handling accusations of child abuse or neglect, including those made against staff;
2. Reporting, consistent with requirements of the Code of Virginia, and documenting suspected cases of child abuse or neglect to the local child protective services unit; [ ~~and~~ ]
3. Cooperating during any investigation [ ~~;~~ and
4. Measures to be taken to ensure the safety of the resident and the staff.

**6VAC35-71-75. Reporting criminal activity.**

A. Staff shall be required to report all known criminal activity by residents or staff, including but not limited to any physical abuse, sexual abuse, or sexual harassment of residents, to the superintendent or designee.

B. The superintendent, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement and child protective services if applicable and appropriate, of suspected criminal violations by residents or staff.

C. The JCC shall assist and cooperate with the investigation of any such complaints and allegations as necessary. ]

**6VAC35-71-80. Grievance procedure.**

A. The superintendent or designee shall ensure the facility's compliance with the department's grievance procedure. The grievance procedure shall provide for the following:

1. Resident participation in the grievance process, with assistance from staff upon request;
2. Investigation of the grievance by an impartial and objective person who is not the subject of the grievance;
3. Documented, timely responses to all grievances with the supporting reasons for the decision;
4. At least one level of appeal;
5. Administrative review of grievances;
6. Protection of residents from retaliation or the threat of retaliation for filing a grievance; and
7. Immediate review of emergency grievances with resolution as soon as practicable but no later than eight hours [ ~~after the initial review~~ ].

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B. Residents shall be oriented to the grievance procedure in an age or developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language [ ~~and~~ ] (ii) posted in an area accessible to residents [ , and (iii) posted in an area easily accessible to parents and legal guardians ].

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

## **6VAC35-71-90. Resident advisory committee.**

Each JCC, except RDC, shall have a resident advisory committee that [ (i) ] is representative of the facility's population [ ~~that~~ and (ii) ] shall meet monthly with the superintendent or designees during which time the residents shall be given the opportunity to raise matters of concern to the residents and [ the opportunity ] to have input into planning, problem-solving, and decision-making in areas of the residential program that affect their lives.

### Part II

#### Administrative and Personnel

##### [ ~~Article 1~~

##### General Provisions ]

## **6VAC35-71-100. Administration and organization.**

Each JCC shall have an organizational chart that includes functions, services, and activities in administrative subunits, which shall be reviewed and updated as needed, as determined by the JCC superintendent or designee.

## **6VAC35-71-110. Organizational communications.**

A. [ ~~The JCC shall comply with department procedures requiring reports concerning major incidents, population data, employee vacancies, and other information as needed or required by department procedures.~~

~~B. ]~~ The superintendent or designee shall meet, at least monthly, with all department heads and key staff members.

[ ~~C. B. ]~~ The superintendent or the assistant superintendent, chief of security, treatment program supervisor, or counseling supervisor, if designated by the superintendent, shall visit the living units and activity areas at least weekly to encourage informal contact with employees and residents and to observe informally the facility's living and working conditions. The superintendent shall make such visits, at a minimum, one time per month.

## **6VAC35-71-120. Community relationships.**

Each JCC shall designate a community liaison and, if appropriate, a community advisory committee that [ ~~serve~~ serves ] as a link between the facility and the community, which may include neighbors, local law enforcement, and local government officials.

## **6VAC35-71-130. Participation of residents in human research.**

A. Residents shall not be used as subjects of human research except as provided in 6VAC35-170 and in accordance with

Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

B. For the purpose of this section, human research means any systematic investigation using human subjects as defined by § 32.1-162.16 of the Code of Virginia and 6VAC35-170. Human research shall not include research prohibited by state or federal statutes or regulations or research exempt from federal regulations or mandated by any applicable statutes or regulations. The testing of medicines or drugs for experimentation or research is prohibited.

### [ ~~Article 2~~

### Background Checks ]

## **6VAC35-71-140. Background checks.**

A. Except as provided in subsection [ ~~C B~~ ] of this section, all persons who (i) accept a position of employment or (ii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of [ ~~his their~~ ] duties in a JCC shall undergo the following background checks, in accordance with § 63.2-1726 of the Code of Virginia, to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents in the JCC:

1. A reference check;

2. A criminal history record check;

3. Fingerprint checks with the Virginia State Police and Federal Bureau of [ ~~Investigations~~ Investigation ] (FBI);

4. A central registry check with Child Protective Services; and

5. A driving record check, if applicable to the individual's job duties.

B. To minimize vacancy time, when the fingerprint checks required by subdivision [ A ] 3 of this [ ~~subsection~~ section ] have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of this subsection have been completed;

2. The applicant is given written notice that continued employment is contingent on the fingerprint check results as required by subdivision [ A ] 3 of this [ ~~subsection~~ section ]; and

3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when under the direct supervision of staff whose background checks have been completed until such time as all the requirements of this section are completed.

C. Documentation of compliance with this section shall be retained.

D. Written procedures shall provide for the supervision of nonemployee persons, who are not subject to the provisions of this [ ~~subsection~~ section ] who have contact with residents.



## [ Article 3

Employee Orientation and Training ]**6VAC35-71-150. Required initial orientation.**

A. Before the expiration of the employee's seventh work day at the facility, each employee shall be provided with a basic orientation on the following:

1. The facility;
2. The population served;
3. The basic objectives of the program;
4. The facility's organizational structure;
5. Security, population control, emergency preparedness, and evacuation procedures in accordance with [ ~~6VAC35-41-460~~ 6VAC35-71-460 ] (emergency and evacuation procedures);
6. The practices of confidentiality;
7. The residents' rights; and
8. The basic requirements of and competencies necessary to perform in their positions.

B. Prior to working with residents while not under the direct supervision of staff who have completed all applicable orientations and training, each direct care staff shall receive a basic orientation on the following:

1. The facility's program philosophy and services;
2. The facility's behavior management program;
3. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;
4. The residents' rules of conduct and responsibilities;
5. The residents' disciplinary and grievance procedures;
6. Child abuse and neglect and mandatory reporting;
7. Standard precautions; and
8. Documentation requirements as applicable to their duties.

C. Volunteers shall be oriented in accordance with 6VAC35-71-240 (volunteer and intern orientation and training).

**6VAC35-71-160. Required initial training.**

A. Each employee shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the position responsibilities. Contractors shall receive training required to perform their position responsibilities in a correctional environment.

B. Direct care staff and employees responsible for the direct supervision of residents shall, before that employee is responsible for the direct supervision of a resident, complete at least 120 hours of training which shall include training in the following areas:

1. Emergency preparedness and response;
2. First aid and cardiopulmonary resuscitation, unless the individual is currently certified, with certification required as applicable to their duties;
3. The facility's behavior management program;
4. The residents' rules of conduct and the rationale for the rules;
5. The facility's behavior interventions, with restraint training required as applicable to their duties;
6. Child abuse and neglect;
7. Mandatory reporting;
8. Maintaining appropriate professional relationships;
9. Appropriate interaction among staff and residents;
10. Suicide prevention;
11. Residents' rights [ , including but not limited to the prohibited actions provided for in 6VAC35-71-550 (prohibited actions) ];
- [ ~~12. Health care training, if applicable, as provided in 6VAC35-71-910 (Health care training of direct care staff);~~ ~~13. 12. ] Standard precautions;~~
- [ ~~14. 13. Recognition of signs and symptoms and knowledge of actions required in medical emergencies;~~
14. Adolescent development;
15. ] Procedures applicable to the employees' position and consistent with their work profiles; and
- [ ~~15. 16. ] Other topics as required by the department and any applicable state or federal statutes or regulations.~~

C. Administrative and managerial staff shall receive at least 40 hours of training during their first year of employment. Clerical and support staff shall receive at least 16 hours of training.

D. Employees who administer medication shall, prior to such administration, successfully complete a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication.

E. Employees providing medical services shall be trained in tuberculosis control practices.

F. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

G. Volunteers and interns shall be trained in accordance with 6VAC35-71-240 (volunteer and intern orientation and training).

**6VAC35-71-170. Retraining.**

A. Each employee shall complete retraining that is specific to the individual's occupational class and the position's job description, and addresses any professional development needs.

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1. Direct care staff and employees who provide direct supervision of the residents shall complete 40 hours of training annually, inclusive of the requirements of this section.

2. Administrative and managerial staff shall receive at least 40 hours of training annually.

3. Clerical and support staff shall receive at least 16 hours of training annually.

4. Contractors shall receive retraining as required to perform their position responsibilities in the correctional environment.

B. All staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures.

C. All direct care staff and employees who provide direct supervision of the residents shall complete annual retraining in the following areas:

1. Suicide prevention;

2. Maintaining appropriate professional relationships;

3. Appropriate interaction among staff and residents;

4. Child abuse and neglect;

5. Mandatory reporting;

[ 6. Resident rights, including but not limited to the prohibited actions provided for in 6VAC35-71-550 (prohibited actions);

6-7. ] Standard precautions;

[ 7-8. ] Behavior management techniques; and

[ 8-9. ] Other topics as required by the department and any applicable state or federal statutes or regulations.

D. All direct care staff shall receive training sufficient to maintain a current certification in first aid and cardiopulmonary resuscitation.

E. Employees who administer medication shall complete annual refresher training on the administration of medication.

F. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

G. All staff approved to apply physical restraints as provided for in 6VAC35-71-1130 (physical restraint) shall be trained as needed to maintain the applicable current certification.

H. All staff approved to apply mechanical restraints shall be retrained annually as required by 6VAC35-71-1180 (mechanical restraints).

I. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements.

[ Article 4  
Personnel ]

## **6VAC35-71-180. Code of ethics.**

A written set of rules describing acceptable standards of conduct for all employees shall be available to all employees.

## **[ 6VAC35-71-185. Employee tuberculosis screening and follow-up.**

A. On or before the employee's start date at the facility and at least annually thereafter each employee shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.

C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee comes into contact with a known case of infectious tuberculosis; or

2. The employee develops chronic respiratory symptoms of three weeks duration.

D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.

E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Virginia Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed consistent with the current requirements of the Virginia Department of Health's Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention. ]

## **6VAC35-71-190. [ Reporting criminal activity. (Reserved.)**

~~A. Staff shall be required to report all known criminal activity by residents or staff to the superintendent or designee.~~

~~B. The superintendent, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement and child protective services if applicable and appropriate, of suspected criminal violations by residents or staff.~~

~~C. The JCC shall assist and cooperate with the investigation of any such complaints and allegations as necessary. ]~~

**6VAC35-71-200. [ Notification of change in driver's license status. (Reserved.)**

~~Staff whose job responsibilities may involve transporting residents shall (i) maintain a valid driver's license and (ii) report to the superintendent or designee any change in their driver's license status, including, but not limited to, suspensions, restrictions, and revocations.~~

Article 5  
Volunteers ]

**6VAC35-71-210. [ Definition of volunteers or interns. (Reserved.)**

~~For the purpose of this chapter, volunteer or intern means any individual or group who of their own free will provides goods and services without competitive compensation. ]~~

**6VAC35-71-220. Selection and duties of volunteers and interns.**

A. Any JCC that uses volunteers or interns shall implement written procedures governing their selection and use. Such procedures shall provide for the evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be clearly defined in writing.

D. Volunteers and interns may not be responsible for the duties of direct care staff.

**6VAC35-71-230. Volunteer and intern background checks.**

A. Any individual who (i) volunteers or is an intern on a regular basis in a JCC and (ii) will be alone with a resident in the performance of the position's duties shall be subject to the background check requirements provided for in of 6VAC35-71-140 A (background checks).

B. Documentation of compliance with the background check requirements shall be maintained for each volunteer or intern for whom a background [ investigation check ] is required.

C. A JCC that uses volunteers or interns shall implement written procedures for supervising volunteers or interns, on whom background checks are not required or whose background checks have not been completed, who have contact with residents.

**6VAC35-71-240. Volunteer and intern orientation and training.**

A. Any individual who (i) volunteers on a regular basis or is an intern in a JCC and will be alone with the resident or (ii) is the designated leader for a group of volunteers shall be provided with a basic orientation on the following:

1. The facility;
2. The population served;

3. The basic objectives of the department;

4. The department and facility organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures;

6. The practices of confidentiality;

7. The residents' rights [ , including but not limited to the prohibited actions provided for in 6VAC35-71-550 (prohibited actions) ]; and

8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

1. Any procedures that are applicable to their duties and responsibilities; and

2. Their duties and responsibilities in the event of a facility evacuation as provided in 6VAC35-71-460 (emergency and evacuation procedures).

[ Article 6  
Employee Records ]

**6VAC35-71-250. [ Employee tuberculosis screening and follow-up. (Reserved.)**

~~A. On or before the employee's start date at the facility and at least annually thereafter each employee shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.~~

~~B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.~~

~~C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:~~

~~1. The employee comes into contact with a known case of infectious tuberculosis; or~~

~~2. The employee develops chronic respiratory symptoms of three weeks duration.~~

~~D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.~~

~~E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90):~~

~~F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.~~

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G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed in compliance with Screening for TB Infection and Diseases, Policy TB 99-001, Virginia Department of Health, Division of Tuberculosis Prevention and Control.

## Article 7 Residents' Records ]

### **6VAC35-71-260. Maintenance of [ residents' ] records.**

A. A separate written or automated case record shall be maintained for each resident, which shall include all correspondence and documents received by the JCC relating to the care of that resident and documentation of all case management services provided.

B. Separate health care records, including behavioral health, as applicable, and medical records, shall be kept on each resident. Health care records shall be maintained in accordance with 6VAC35-71-1020 (residents' health records) and applicable statutes and regulations. Behavioral health care records may be kept separately from other medical records.

C. Each case record and health care record shall be kept up to date and in a uniform manner in accordance with written procedures. Case records shall be released in accordance with §§ 16.1-300 and 16.1-309.1 of the Code of Virginia and applicable state and federal laws and regulations.

D. The procedures for management of residents' records, written and automated, shall describe confidentiality, accessibility, security, and retention of records [ pertaining to residents, ] including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;
2. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information, and transportation of records between service sites; and
3. Designation of the person responsible for records management.

E. Active and closed records shall be kept in secure locations or compartments that are accessible only to authorized employees and are protected from unauthorized access, fire, and flood.

F. Each resident's written case and health care records shall be stored separately subsequent to the resident's discharge in accordance with applicable statutes and regulations.

G. Residents' inactive records shall be retained as required by The Library of Virginia.

### **6VAC35-71-270. Face sheet.**

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, [ gender sex ], race, social security number or other unique

identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, supervising agency, emergency contacts, and parents, if appropriate.

B. The face sheet shall be updated when changes occur and maintained in accordance with written procedures.

## Part III Physical Environment

### **6VAC35-71-280. Buildings and inspections.**

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and approved by the appropriate building officials. There shall be a valid, current certificate of occupancy available at each JCC.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to timely inspect the facility's buildings and equipment, the facility shall maintain documentation of its request to schedule the annual inspection, as well as documentation of any necessary follow-up. For this subsection, the definition of annual shall be defined by the Virginia Department of Fire Programs, State Fire Marshal's Office.

C. The facility shall maintain a current copy of its compliance with annual inspection and approval by an independent, outside source in accordance with state and local inspection laws, regulations, and ordinances, of the following:

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

### **6VAC35-71-290. Equipment and systems inspections and maintenance.**

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent such requirements, in accordance with a schedule that is approved by the superintendent.

1. The facility shall maintain a listing of all safety, emergency, and communications equipment and systems and the schedule established for inspections and testing.
2. Testing of such equipment and systems shall, at a minimum, be conducted quarterly.

B. Whenever safety, emergency, and communications equipment or a system is found to be defective, immediate steps shall be taken to rectify the situation and to repair, remove, or replace the defective equipment.

## **6VAC35-71-300. Alternate power source.**

Each JCC shall have access to an alternate power source to maintain essential services in an emergency.

## **6VAC35-71-310. Heating and cooling systems and ventilation.**

A. Heat shall be distributed in all rooms occupied by the residents so that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

## **6VAC35-71-320. Lighting.**

A. Sleeping and activity areas shall provide natural lighting.

B. All areas within buildings shall be lighted for safety, and the lighting shall be sufficient for the activities being performed.

C. Night lighting shall be sufficient to observe residents.

D. Operable flashlights or battery-powered lanterns shall be accessible to each direct care staff on duty.

E. Outside entrances and parking areas shall be lighted.

## **6VAC35-71-330. Plumbing and water supply; temperature.**

A. Plumbing shall be maintained in operational condition, as designed.

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

C. Precautions shall be taken to prevent scalding from running water. Hot water temperatures should be maintained at 100°F to 120°F.

## **6VAC35-71-340. Drinking water.**

A. In all JCCs constructed after January 1, 1998, all sleeping areas shall have fresh drinking water for residents' use.

B. All activity areas shall have potable drinking water available for residents' use.

## **6VAC35-71-350. Toilet facilities.**

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

~~B. A. ] There shall be toilet facilities available for resident use in all sleeping areas for each JCC constructed after January 1, 1998.~~

~~[ C. B. ] There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities [ licensed certified ] before July 1, 1981. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981.~~

~~[ D. C. ] There shall be at least one bathtub in each facility.~~

~~[ E. D. ] The maximum number of employees on duty in the living unit shall be counted in determining the required~~

number of toilets and hand basins when a separate bathroom is not provided for staff.

## **6VAC35-71-360. Sleeping areas.**

A. Male and female residents shall have separate sleeping areas.

B. Beds in all facilities or sleeping areas established, constructed, or structurally modified after July 1, 1981, shall be at least three feet apart at the head, foot, and sides; and double-decker beds in such facilities shall be at least five feet apart at the head, foot, and sides. Facilities or sleeping areas established, constructed, or structurally modified before July 1, 1981, shall have a bed placement plan approved by the director or designee.

C. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer, except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

D. Sleeping quarters established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;
2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and
3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

## **6VAC35-71-370. Furnishings.**

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

## **6VAC35-71-380. Disposal of garbage and waste.**

Provision shall be made for the collection and legal disposal of all garbage and waste materials.

## **6VAC35-71-390. Hazardous materials and chemicals.**

A. Each facility shall have a hazard communication plan that (i) governs the evaluation of the potential hazards of chemicals used at the facility and (ii) requires the communication of information to employees concerning hazards and appropriate protective measures.

B. All flammable, toxic, [ medical, ] and caustic materials within the JCC shall be stored, used, and disposed of in appropriate receptacles and in accordance with federal, state, and local requirements.

## **6VAC35-71-400. Smoking prohibition.**

Residents shall be prohibited from using, possessing, purchasing, or distributing any tobacco products. Tobacco products, including cigarettes, cigars, pipes, and smokeless tobacco, such as chewing tobacco or snuff, shall not be used by staff or visitors in any areas of the facility or its premises where residents may see or smell the tobacco product.

## **6VAC35-71-410. Space utilization.**

A. Each JCC shall provide for the following:

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1. An indoor recreation area with appropriate recreation materials;
2. An outdoor recreation area;
3. Kitchen facilities and equipment for the preparation and service of meals;
4. A dining area equipped with tables and seating;
5. Space and equipment for laundry [ ~~equipment~~ ], if laundry is done on site;
6. Space for the storage of items such as first aid equipment, household supplies, recreational equipment, and other materials;
7. A designated visiting area that permits informal communication between residents and visitors, including opportunity for physical contact in accordance with written procedures;
8. Space for administrative activities including, as appropriate to the program, confidential conversations and [ ~~provision for the~~ ] storage of records and materials; and
9. A central medical room with medical examination facilities equipped in consultation with the health authority.

B. If a school program is operated at the facility, school classrooms shall be designed in consultation with appropriate education authorities to comply with applicable state and local requirements.

C. Spaces or areas may be interchangeably utilized but shall be in functional condition for the designated purpose.

## **6VAC35-71-420. Kitchen operation and safety.**

A. Each facility shall have a food service operation maintenance plan that addresses the following: (i) food sanitation and safety procedures; (ii) the inspection of all food service, preparation, and dining areas and equipment; (iii) a requirement for sanitary and temperature-controlled storage facilities for food; and (iv) the monitoring of refrigerator and water temperatures.

B. [ ~~Written~~ The facility shall follow ] procedures [ ~~shall govern~~ governing ] access to all areas where food or utensils are stored and the inventory and control of culinary equipment to which residents reasonably may be expected to have access.

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

D. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in laundering table and kitchen linens.

## **6VAC35-71-430. Maintenance of the buildings and grounds.**

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This includes but is not limited to (i) required locks, mechanical devices, indoor and outdoor equipment, and

furnishings; and (ii) all areas where residents, staff, and visitors may reasonably be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

C. Each facility shall have a written plan to control pests and vermin. Buildings shall be kept reasonably free of flies, roaches, rats, and other vermin. Any condition conducive to harboring or breeding insects, rodents, or other vermin shall be eliminated immediately. Each facility shall document efforts to eliminate such conditions [ , as applicable ].

## **6VAC35-71-440. Animals on the premises.**

A. Animals maintained on the premises shall be housed at a reasonable distance from sleeping, living, eating, and food preparation areas as well as a safe distance from water supplies.

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

C. The premises shall be kept reasonably free of stray domestic animals.

D. Pets shall be provided with clean sleeping areas and adequate food and water.

## Part IV Safety and Security

### **6VAC35-71-450. Fire prevention plan.**

Each JCC shall develop and implement a fire prevention plan that provides for an adequate fire protection service.

### **6VAC35-71-460. Emergency and evacuation procedures.**

A. Each JCC shall have a written emergency preparedness and response plan. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks; (ii) communitywide plans to address different disasters and emergency situations; and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the facility's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, workplace violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for (i) provision of administrative direction and management of response activities; (ii) coordination of logistics during the emergency; (iii) communications; (iv) life safety of employees, contractors, interns, volunteers, visitors, and residents; (v) property protection; (vi) community outreach; [ and ] (vii) [ ~~and~~ ] recovery and restoration;

4. Written emergency response procedures for (i) assessing the situation; (ii) protecting residents, employees,

contractors, interns, volunteers, visitors, equipment, and vital records; and (iii) restoring services shall address:

- a. Communicating with employees, contractors, and community responders;
- b. Warning and notification of residents;
- c. Providing emergency access to secure areas and opening locked doors;
- d. Requiring fire and emergency keys that are instantly identifiable by sight and touch;
- e. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;
- f. Relocating residents, if necessary;
- g. Notifying parents and legal guardians, as applicable and appropriate;
- h. Alerting emergency personnel and sounding alarms;
- i. Locating and shutting off utilities when necessary; and
- j. Providing for a planned, personalized means of effective egress for residents who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. All employees shall be trained to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. Such training shall include the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency information for residents including medical information; and
5. Utilizing community support services.

C. Contractors and volunteers shall be oriented in their responsibilities in implementing the evacuation plan in the event of an emergency. Such orientation shall be in accordance with the requirements of 6VAC35-71-150 (required initial orientation), 6VAC35-71-160 (required initial training), and 6VAC35-71-240 (volunteer and intern orientation and training).

D. The JCC shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees,

contractors, volunteers, and interns and shall be incorporated into (i) training for employees, contractors, interns, and volunteers; and (ii) orientation of residents to services.

E. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the facility shall take appropriate action to protect the health, safety and welfare of the residents and to remedy the conditions as soon as possible.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the facility should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the facility shall (i) report the disaster or emergency to (a) the legal guardian and (b) the director or his designee of the conditions at the facility and (ii) report the disaster or emergency to the regulatory authority. Such reporting shall be made as soon as possible but no later than 72 hours after the incident is stabilized.

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they can easily be seen by employees and residents.

H. The responsibilities of the residents in implementing the emergency and evacuation procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;
2. Date and time of drill;
3. Amount of time to evacuate the buildings; and
4. Specific problems encountered.

K. Each JCC shall assign one employee who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

### **6VAC35-71-470. Security procedures.**

Each JCC shall follow written security procedures related to the following:

1. Post orders or shift duties for each security post;
2. Population count;
3. A control center that integrates all external and internal security functions and communications, is secured from residents' access, and is staffed 24 hours a day;
4. Control of the perimeter;
5. Actions to be taken regarding any escapes or absences without permission;

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6. Searches of the buildings [~~and,~~] premises [, and persons ]; and

7. The control, detection, and disposition of contraband.

## **6VAC35-71-480. Searches of residents.**

A. Written procedures shall govern searches of residents, including patdowns and frisk searches, strip searches, and body cavity searches, and shall include the following:

1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.

2. Searches are conducted only by personnel who are authorized to conduct such searches.

3. The resident shall not be touched any more than is necessary to conduct the search.

B. [ Patdown and frisk searches shall be conducted by personnel of the same sex as the resident being searched, except in emergencies.

C. ] Strip searches and visual inspections of the vagina and anal cavity areas shall be subject to the following:

1. The search shall be performed by personnel of the same sex as the resident being searched;

2. The search shall be conducted in an area that ensures privacy; and

3. Any witness to the search shall be of the same [ ~~gender~~ sex ] as the resident.

[ ~~C. D.~~ ] Manual and instrumental searches of the anal cavity or vagina, not including medical examinations or procedures conducted by medical personnel for medical purposes, shall be:

1. Performed only with the written authorization of the facility administrator or by a court order;

2. Conducted by a qualified medical professional;

3. Witnessed by personnel of the same [ ~~gender~~ sex ] as the resident; and

4. Fully documented in the resident's medical file.

## **6VAC35-71-490. Communications systems.**

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

B. There shall be a means for communicating between the control center and living units.

C. The facility shall be able to provide communications in an emergency.

## **6VAC35-71-500. Emergency telephone numbers.**

An emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff or law-enforcement officials.

## **6VAC35-71-510. Weapons.**

No firearms or other weapons shall be permitted on the JCC's premises and during JCC-related activities except as provided in written procedures or authorized by the director or designee. Written procedures shall govern any possession, use, and storage of authorized firearms and other weapons on the JCC's premises and during JCC-related activities.

## **6VAC35-71-520. Equipment inventory.**

[ ~~Written procedure shall govern~~ The facility shall follow written procedures governing ] the inventory and control of all security, maintenance, recreational, and medical equipment of the facility to which residents reasonably may be expected to have access.

## **6VAC35-71-530. Power equipment.**

The facility shall implement written safety rules for use and maintenance of power equipment.

## **6VAC35-71-540. Transportation.**

A. Each JCC shall have transportation available or make the necessary arrangements for routine and emergency transportation.

B. There shall be written safety rules for transportation of residents and for the use and maintenance of vehicles.

C. Written procedure shall provide for the verification of appropriate licensure for staff whose duties involve transporting residents.

### Part V

### Residents' Rights

## **6VAC35-71-550. Prohibited actions.**

Residents shall not be subjected to the following actions:

1. [ ~~Discrimination in violation of the Constitution of the United States, the Constitution of the Commonwealth of Virginia, and state and federal statutes and regulations.~~

2. ] Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

[ ~~2. 3.~~ ] Denial of contacts and visits with the resident's attorney, a probation officer, the regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;

[ ~~3. 4.~~ ] Any action that is humiliating, degrading, abusive, or unreasonably impinges upon the residents' rights [ , including but not limited to any form of physical abuse, sexual abuse, or sexual harassment ];

[ ~~4. Denial of equal access to agency programs and activities;~~ ]

5. Corporal punishment, which is administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii)



pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort;

6. Subjection to unsanitary living conditions;

7. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

8. Denial of health care;

9. Denial of appropriate services [ , programs, activities, ] and treatment;

10. Application of aversive stimuli, except as provided in this chapter or permitted pursuant to other applicable state regulations. Aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual [  ~~, but does not include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident ]~~ ;

11. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

12. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

13. [ ~~Involuntary use~~ Use ] of pharmacological restraints [ ~~(administration of medication for the emergency control of an individual's behavior when the administration is not a standard treatment for the resident's medical or psychiatric condition)~~ ]; [ and ]

[ ~~14. Discrimination on the basis of race, religion, national origin, sex, or physical disability; and~~

~~15.~~ 14. ] Other constitutionally prohibited actions.

[ **6VAC35-71-555. Vulnerable population.**

A. The facility shall implement a procedure for assessing whether a resident is a member of a vulnerable population.

B. If the assessment determines a resident is a vulnerable population, the facility shall implement any identified additional precautions such as heightened need for supervision, additional safety precautions, or separation from certain other residents. The facility shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety and whether the placement would present management or security problems.

C. For the purposes of this section, vulnerable population means a resident or group of residents who have been assessed to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally (e.g., very young residents; residents who are small in stature; residents who have limited English

proficiency; residents who are gay, lesbian, bi-sexual, transgender, or intersex; residents with a history of being bullied or of self-injurious behavior). ]

**6VAC35-71-560. Residents' mail.**

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section, as permitted by other applicable regulations, or by order of a court.

B. Staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate facility interests of order and security, nonlegal mail may be read, censored, or rejected in accordance with written procedures. The resident shall be notified when incoming or outgoing letters are withheld in part or in full.

C. In the presence of the recipient and in accordance with written procedures, staff may open to inspect for contraband, but shall not read, legal mail. For the purpose of this section, legal mail means a communication sent to or received from a designated class of correspondents, as defined in written procedures, including but not limited to the court, an attorney, and the grievance system or department administrators.

D. Staff shall not read mail addressed to parents, immediate family members, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public officials, or grievance administrators unless (i) permission has been obtained from a court or (ii) the director or his designee has determined that there is a reasonable belief that the security of a facility is threatened. When so authorized staff may read such mail, in accordance with written procedures.

E. Except as otherwise provided [ ~~in this section~~ ], incoming and outgoing letters shall be held for no more than 24 hours and packages shall be held for no more than 48 hours, excluding weekends and holidays.

F. Upon request, each resident shall be given postage and writing materials for all legal correspondence and at least two other letters per week.

G. Residents shall be permitted to correspond at their own expense with any person or organization provided such correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

H. First class letters and packages received for residents who have been transferred or released shall be forwarded.

I. Written procedure governing correspondence of residents shall be made available to all employees and residents and updated as needed.

**6VAC35-71-570. Telephone calls.**

Telephone calls shall be permitted in accordance with written procedures that take into account the need for facility security and order, the resident's behavior, and program objectives.

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## **6VAC35-71-580. Visitation.**

A. A resident's contacts and visits with immediate family members or legal guardians shall not be subject to unreasonable limitations [ except, and any limitation shall be implemented only ] as permitted by written procedures, other applicable regulations, or by order of a court.

B. Residents shall be permitted to have visitors, consistent with written procedures that take into account (i) the need for facility security and order, (ii) the behavior of individual residents and the visitors, and (iii) the importance of helping the resident maintain strong family and community relationships. Written procedures shall provide for the accommodation of special circumstances.

C. Copies of the visitation procedures shall be mailed, either electronically or via first class mail, to the residents' parents or legal guardians, as applicable and appropriate, and other applicable persons no later than close of the next business day after arrival at the JCC, unless a copy has already been provided to the individual.

D. Resident visitation at an employee's home is prohibited.

## **6VAC35-71-590. Contact with attorneys, courts, and law enforcement.**

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as provided for in [ ~~6VAC35-41-560~~ 6VAC35-71-560 ] (residents' mail), by telephone, or in person. Reasonable limits may be placed on such contacts as necessary to protect the security and order of the facility. [ ~~For the purpose of this section a legal representative is defined as a court appointed or retained attorney or a paralegal, investigator, or other representative from the attorney's office. Evidence that the attorney has been retained shall be required prior to permitting access.~~ ]

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, though they may do so voluntarily.

1. Written procedures shall be implemented for obtaining a resident's consent prior to any contact with law enforcement.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

## **6VAC35-71-600. Personal necessities.**

A. At admission, each resident shall be provided the following:

1. An adequate supply of personal necessities for hygiene and grooming;

2. Size-appropriate clothing and shoes for indoor [ ~~or~~ and ] outdoor wear;

3. A separate bed equipped with a mattress, a pillow, blankets, bed linens, and, if needed, a waterproof mattress cover; and

4. Individual washcloths and towels.

B. At the time of issuance, all items shall be clean and in good repair.

C. Personal necessities shall be replenished as needed.

D. The washcloths, towels, and bed linens shall be cleaned or changed, at a minimum, once every seven days [ and more often, if needed ]. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of such linens.

E. After issuance, blankets shall be cleaned or changed as needed.

## **6VAC35-71-610. Showers.**

Residents shall have the opportunity to shower daily except as (i) provided in written procedures for the purpose of maintaining facility security or for the special management of maladaptive behavior if approved by the superintendent or designee or a mental health professional or (ii) approved by the regulatory authority.

## **6VAC35-71-620. Residents' [ ~~privacy~~ modesty ].**

Residents shall be provided [ ~~privacy~~ a level of modesty ] from routine sight supervision by staff members of the opposite [ ~~gender~~ sex ] while bathing, dressing, or conducting toileting activities except [ (i) in exceptional security circumstances or (ii) ] when constant supervision is necessary to protect the resident due to mental health issues. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

## **6VAC35-71-630. Nutrition.**

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals, of which two are hot meals, and an evening snack; (ii) includes an adequate variety and quantity of food for the age of the resident; and (iii) meets [ ~~minimum~~ the ] nutritional requirements [ ~~and the U.S. Dietary Guidelines~~ of all applicable federal dietary requirements, such as U.S. Department of Agriculture (USDA) ].

B. Special diets or alternative dietary schedules, as applicable, shall be provided in the following circumstances: (i) when prescribed by a physician; (ii) when necessary to observe the established religious dietary practices of the resident; or (iii) when necessary for the special management of maladaptive behavior or to maintain facility security if approved by the superintendent or designee or a mental health professional. In such circumstances, the meals shall meet the minimum nutritional requirements of [ ~~the U.S. Dietary Guidelines~~ all applicable federal dietary requirements, such as USDA, ] and any required approval shall be documented.

C. Menus of actual meals served shall be kept on file for at least six months.

Part VI  
Program Operation

[ ~~Article 4~~  
~~Placement, Transfer, and Release~~ ]

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day, except when the superintendent approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.

F. Each JCC shall assure that food is available to residents who for documented medical or religious reasons need to eat breakfast before the 15 hours have expired.

**6VAC35-71-640. Reading materials.**

Reading materials that are appropriate to residents' ages and levels of competency shall be available to all residents.

**6VAC35-71-650. Religion.**

A. Residents shall not be required or coerced to participate in or unreasonably denied participation in religious activities.

B. Residents shall be informed of their rights relating to religious participation during orientation as provided in 6VAC35-71-680 (admission and orientation).

**6VAC35-71-660. Recreation.**

A. Each JCC shall implement a recreational program plan that includes:

1. Opportunities for individual and group activities;
2. Opportunity for large muscle exercise daily;
3. Scheduling so that activities do not conflict with meals, religious services, educational programs, or other regular events; and
4. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills. Outdoor recreation will be available whenever practicable in accordance with the facility's recreation plan. Staff shall document any adverse weather conditions, threat to facility security, or other circumstances preventing outdoor recreation.

B. Each recreational program plan shall (i) address the means by which residents will be medically assessed for any physical limitations or necessary restrictions on physical activities and (ii) provide for the supervision of and safeguards for residents, including when participating in water related and swimming activities.

**6VAC35-71-670. Residents' funds.**

Residents' funds, including any per diem or earnings, shall be used only (i) for their benefit; (ii) for payment of any fines, restitution, costs, or support ordered by a court or administrative judge; or (iii) to pay restitution for damaged property or personal injury as determined by disciplinary procedures.

**6VAC35-71-680. Admission and orientation.**

A. Written procedure governing the admission and orientation of residents to the JCC shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate and provided for in 6VAC35-71-690 (residents' personal possessions);
3. Health screening as provided for in 6VAC35-71-940 (health screening at admission);
4. Notification of parent or legal guardian of admission;
5. Provision to the parent or legal guardian of information on (i) visitation, (ii) how to request information, and (iii) how to register concerns and complaints with the facility;
6. Interview with resident to answer questions and obtain information;
7. Explanation to resident of program services and schedules; and
8. Assignment of resident to a living unit, sleeping area, or room.

B. The resident shall receive an orientation to the following:

1. The behavior management program as required by [ ~~6VAC35-71-1090~~ 6VAC35-71-745 ] (behavior management).
  - a. During the orientation, residents shall be given written information describing rules of conduct, the sanctions for rule violations, and the disciplinary process. These shall be explained to the resident and documented by the dated signature of resident and staff.
  - b. Where a language or literacy problem exists that can lead to a resident misunderstanding the rules of conduct and related regulations, staff or a qualified person under the supervision of staff shall assist the resident.
2. The grievance procedure as required by 6VAC35-71-80 (grievance procedure).
3. The disciplinary process as required by 6VAC35-71-1110 (disciplinary process).
4. The resident's responsibilities in implementing the emergency procedures as required by 6VAC35-71-460 (emergency and evacuation procedures).
- [ ~~5.~~ 6.] The resident's rights, including but not limited to the prohibited actions provided for in 6VAC35-71-550 (prohibited actions).
- ~~5.~~ 6.] The resident's rights relating to religious participation as required by 6VAC35-71-650 (religion).

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## **6VAC35-71-690. Residents' personal possessions.**

A. Each JCC shall inventory residents' personal possessions upon admission and document the information in residents' case records. When a resident arrives at a JCC with items that the resident is not permitted to possess in the facility, staff shall:

1. Dispose of contraband items in accordance with written procedures;
2. If the items are nonperishable property that the resident may otherwise legally possess, securely store the property and return it to the resident upon release; or
3. Make reasonable documented efforts to return the property to the resident, or parent or legal guardian.

B. Personal property that remains unclaimed six months after a documented attempt to return the property may be disposed of in accordance with written procedures.

## **6VAC35-71-700. Classification plan.**

A. A JCC shall utilize an objective classification system for determining appropriate security levels, the needs, and the most appropriate services of the residents and for assigning them to living units according to their needs and existing resources.

B. Residents shall be placed according to their classification levels. Such classification shall be reviewed as necessary in light of (i) the facility's safety and security and (ii) the resident's needs and progress.

## **6VAC35-71-710. Resident transfer between and within JCCs.**

A. When a resident is transferred between JCCs, the following shall occur:

1. The resident's case records, including medical and behavioral health records, shall accompany the resident to the receiving facility; and
2. The resident's parents or legal guardian, if applicable and appropriate, and the court service unit or supervising agency shall be notified within 24 hours of the transfer.

B. When a resident is transferred to a more restrictive unit, program, or facility within a JCC or between JCCs, the JCC shall provide due process safeguards for residents prior to their transfer.

C. In the case of emergency transfers, such safeguards and notifications shall be instituted as soon as practicable after transfer.

## **6VAC35-71-720. Release.**

A. Residents shall be released from a JCC in accordance with written procedure.

B. The case record of each resident serving an indeterminate commitment, who is not released pursuant to a court order, shall contain the following:

1. A discharge plan developed in accordance with written procedures;

2. Documentation that the release was discussed with the parent or legal guardian, if applicable and appropriate, the court services unit, and the resident; and

3. As soon as possible, but no later than 30 days after release, a comprehensive release summary placed in the resident's record and sent to the persons or agency that made the placement. The release summary shall review:

- a. Services provided to the resident;
- b. The resident's progress toward meeting service plan objectives;
- c. The resident's continuing needs and recommendations, if any, for further services and care;
- d. The names of persons to whom resident was released;
- e. Dates of admission and release; and
- f. Date the release summary was prepared and the identification of the person preparing it.

C. The case record of each resident serving a determinate commitment or released pursuant to an order of a court shall contain a copy of the court order.

D. As appropriate and applicable, information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate and applicable.

E. Upon discharge, the (i) date of discharge and (ii) the name of the person to whom the resident was discharged, if applicable, shall be documented in the case record.

[ Article 2

Programs and Services ]

## **6VAC35-71-730. [ ~~Operational procedures.~~ (Reserved.)**

~~Current operational procedures shall be accessible to all staff.~~

## **6VAC35-71-740. Structured programming.**

A. Each facility shall implement a comprehensive, planned, and structured daily routine, including appropriate supervision, designed to:

1. Meet the residents' physical and emotional needs;
2. Provide protection, guidance, and supervision;
3. Ensure the delivery of program services; and
4. Meet the objectives of any individual service plan.

B. Residents shall be provided the opportunity to participate in programming, as applicable, upon admission to the facility.

## **[ 6VAC35-71-745. Behavior management.**

A. Each JCC shall implement a behavior management program approved by the director or designee. Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written

procedures governing program expectations, treatment goals, resident and staff safety and security, and the resident's individual service plan.

B. Written procedures governing this program shall provide the following:

1. List the behavioral expectations for the resident;
2. Define and list techniques that are used and available for use;
3. Specify the staff members who may authorize the use of each technique;
4. Specify the processes for implementing; and
5. Means of documenting and monitoring of the program's implementation.

C. When substantive revisions are made to the behavior management program, written information concerning the revisions shall be provided to the residents and direct care staff prior to implementation.

**6VAC35-71-747. Behavior support contract.**

A. When a resident exhibits a pattern of behavior indicating a need for behavioral support in addition to that provided in the facility's behavior management program, a written behavior support contract shall be developed, in accordance with written procedures, with the intent of assisting the resident to self-manage these behaviors. Procedures governing behavior support contracts shall address (i) the circumstances under which such contracts will be utilized and (ii) the means of documenting and monitoring the contract's implementation.

B. Prior to working alone with an assigned resident, each staff member shall review and be prepared to implement the resident's behavior support contract. ]

**6VAC35-71-750. Communication with court service unit staff.**

A. Each resident's probation or parole officer shall be provided with the contact information for an individual at the facility to whom inquiries on assigned resident cases may be addressed.

B. The resident's probation or parole officer shall be invited to participate in any scheduled classification and staffing team meetings at RDC and any scheduled treatment team meetings.

**6VAC35-71-760. Communication with parents.**

A. Each resident's parent or legal guardian, as appropriate and applicable, shall be provided with the contact information for an individual at the facility to whom inquiries regarding the resident may be addressed.

B. [ ~~If contacted by the~~ The ] resident's parent or legal guardian, [ ~~the facility as appropriate and applicable,~~ ] shall [ ~~provide the requesting individual with~~ be provided written notice of and ] the opportunity to participate in any scheduled

classification and staffing team meetings at RDC and any scheduled treatment team meetings.

**6VAC35-71-770. Case management services.**

A. The facility shall implement written procedures governing case management services, which shall address:

1. The resident's adjustment to the facility, group living, and separation from the resident's family;
2. Supportive counseling, as needed;
3. Transition and community reintegration planning and preparation; and
4. Communicating with (i) staff at the facility; (ii) the parents or legal guardians, as appropriate and applicable; (iii) the court service unit; and (iv) community resources, as needed.

B. The provision of case management services shall be documented in the case record.

**6VAC35-71-780. [ ~~Daily log.~~ (Reserved.)**

~~A. A daily log shall be maintained, in accordance with written procedures, to inform staff of significant happenings or problems experienced by residents including, but not limited to, health and dental complaints and injuries.~~

~~B. Each entry in the daily log shall contain (i) the date of the entry, (ii) the name of the individual making the entry, and (iii) the time each entry is made. ]~~

**6VAC35-71-790. Individual service plans.**

A. An individual service plan shall be developed and placed in the resident's record within 30 days following arrival at the facility and implemented immediately thereafter. This section does not apply to residents who are housed at RDC for 60 days or less. If a resident remains at RDC for longer than 60 days, an individual plan shall be developed at that time, placed in the resident's record, and implemented immediately thereafter.

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;
2. Resident's current level of functioning;
3. Goals, objectives, and strategies established for the resident;
4. Projected family involvement;
5. Projected date for accomplishing each objective; and
6. Status of the projected release plan and estimated length of stay except that this requirement shall not apply to residents who are determinately committed to the department.

C. Each individual service plan shall include the date it was developed and the signature of the person who developed it.

D. The resident and facility staff shall participate in the development of the individual service plan.

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E. The supervising agency and resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

F. Copies of the individual service plan shall be provided to the (i) resident; (ii) parents or legal guardians, as appropriate and applicable, and (iii) placing agency.

G. The individual service plan shall be reviewed within 60 days of the development of the individual service plan and within each 90-day period thereafter.

H. The individual service plan shall be updated annually and revised as necessary. Any changes to the plan shall be made in writing. All participants shall receive copies of the revised plan.

## **6VAC35-71-800. Quarterly reports.**

A. The resident's progress toward meeting his individual service plan goals shall be reviewed, and a progress report shall be prepared within 60 days of the development of the service plan and within each 90-day period thereafter. The report shall review the status of the following:

1. Resident's progress toward meeting the plan's objectives;
2. Family's involvement;
3. Continuing needs of the resident;
4. Resident's progress towards discharge; and
5. Status of discharge planning.

B. Each quarterly progress report shall include the date it was developed and the signature of the person who developed it.

C. All quarterly progress reports shall be reviewed with the resident and distributed to the resident's parents, legal guardian, or legally authorized representative; the supervising agency; and appropriate facility staff.

## **[ 6VAC35-71-805. Suicide prevention.**

Written procedure shall provide that (i) there is a suicide prevention and intervention program developed in consultation with a qualified medical or mental health professional and (ii) all direct care staff are trained and retrained in the implementation of the program. ]

## **6VAC35-71-810. Behavioral health services.**

Behavioral health services, if provided, shall be provided by an individual (i) licensed by the Department of Health Professions or (ii) who is working under the supervision of a licensed clinician.

## **[ 6VAC35-71-815. Daily log.**

A. A daily log shall be maintained, in accordance with written procedures, to inform staff of significant happenings or problems experienced by residents, including but not limited to health and dental complaints and injuries.

B. Each entry in the daily log shall contain (i) the date of the entry, (ii) the name of the individual making the entry, and (iii) the time each entry is made.

## **Article 3 Supervision ]**

## **6VAC35-71-820. Staff supervision of residents.**

A. Staff shall provide 24-hour awake supervision seven days a week.

B. No member of the direct care staff shall be on duty more than six consecutive days without a rest day, except in an emergency. For the purpose of this section, a rest day means a period of not less than 24 consecutive hours during which the direct care staff person has no responsibility to perform duties related to the operation of a JCC.

C. Direct care staff shall be scheduled with an average of at least two rest days per week in any four-week period.

D. Direct care staff shall not be on duty more than 16 consecutive hours, except in an emergency.

E. There shall be at least one trained direct care staff on duty and actively supervising residents at all times that one or more residents are present.

F. The facility shall implement written procedures that address staff supervision of residents including contingency plans for resident illnesses, emergencies, and off-campus activities. These procedures shall be based on the:

1. Needs of the population served;
2. Types of services offered;
3. Qualifications of staff on duty; and
4. Number of residents served.

G. Staff shall regulate the movement of residents within the facility in accordance with written procedures.

H. No JCC shall permit an individual resident or group of residents to exercise control or authority over other residents except when practicing leadership skills as part of an approved program under the direct and immediate supervision of staff.

## **6VAC35-71-830. Staffing pattern.**

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, facility-sponsored activities.

B. During the hours that residents are scheduled to sleep, there shall be no less than one direct care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building or living unit where residents are sleeping.

## **6VAC35-71-840. Outside personnel.**

A. JCC staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents.

B. Adult inmates shall not work in the immediate presence of any resident and shall be monitored in a way that there shall be no direct contact between or interaction among adult inmates and residents.

[ Article 4  
Work Programs ]

**6VAC35-71-850. Facility work assignments.**

A. Work assignments, whether paid or unpaid, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Work assignments shall not interfere with school programs, study periods, meals, or sleep.

**6VAC35-71-860. Agreements governing juvenile industries work programs.**

A. If the department enters into an agreement with a public or private entity for the operation of a work program pursuant to § 66-25.1 of the Code of Virginia, the agreement shall:

1. Comply with all applicable federal and state laws and regulations, including but not limited to the Fair Labor Standards Act (29 USC § 201 et seq.), child labor laws, and workers' compensation insurance laws;
2. State the length of the agreement and the criteria by which it may be extended or terminated;
3. Specify where residents will work and, if not at a juvenile correctional center, the security arrangements at the work site; and
4. Summarize the educational, vocational, or job training benefits to residents.

B. The agreement shall address how residents will be hired and supervised, including:

1. The application and selection process;
2. The qualifications required of residents;
3. A requirement that there be a job description for each resident's position;
4. Evaluation of each resident's job-related behaviors and attitudes, attendance, and quality of work; and
5. Whether and how either party may terminate a resident's participation.

C. The agreement shall address resident's compensation including:

1. The manner by which and through what funding source residents are to be paid; and
2. If applicable, whether any deductions shall be made from the resident's compensation for subsistence payments, restitution to victims, etc.

D. As applicable, the agreement shall specify:

1. That accurate records be kept of the work program's finances, materials inventories, and residents' hours of work, and that such records be subject to inspection by either party and by an independent auditor;

2. How the project's goods or services will be marketed;
3. How proceeds from the project will be collected and distributed to the parties; and
4. Which party is responsible for providing:
  - a. The materials to be worked on;
  - b. The machinery to be used;
  - c. Technical training and supervision in the use of equipment or processes;
  - d. Utilities;
  - e. Transportation of raw materials and finished goods;
  - f. Disposal of waste generated in the work project; and
  - g. Safety and other special equipment and clothing.

Part VII  
Health Care Services

**6VAC35-71-870. [ ~~Health care services definitions.~~ (Reserved.)**

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including, but not limited to, all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering health care screenings, reviewing screening forms for necessary follow up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders. ]

**6VAC35-71-880. Local health authority.**

A physician, health administrator, government authority, health care contractor, supervising registered nurse or head nurse, or health agency shall be designated the local health authority responsible for organizing, planning, and monitoring the timely provision of appropriate health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services, including medical, nursing, dental, and mental health care, consistent with applicable statutes, prevailing community standards, and medical ethics. All medical, psychiatric, dental, and nursing matters are the province of the physician, dentist, and nurse, respectively.

**6VAC35-71-890. Provision of health care services.**

A. The health care provider shall be guided by recommendations of the American Academy of Family Practice or the American Academy of Pediatrics, as appropriate, in the direct provision of health care services.

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B. Treatment by nursing personnel shall be performed pursuant to the laws and regulations governing the practice of nursing within the Commonwealth. Other health trained personnel shall provide care within their level of training and certification.

## **6VAC35-71-900. Health care procedures.**

A. The department shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;
2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;
3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian, if under the age of 18, or the resident, if over the age of 18;
4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and
5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to designated staff who may have to respond to a medical or dental emergency:

1. The physician or dentist to be contacted;
2. Name, address, and telephone number of a relative or other person to be notified; and
3. Information concerning:
  - a. Use of medication;
  - b. All allergies, including medication allergies;
  - c. Substance abuse and use; and
  - d. Significant past and present medical problems.

[ C. Other health trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

D. The facility shall retain documentation of the training received by health trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section. ]

## **6VAC35-71-910. [ Health care training of direct care staff. (Reserved.)**

Direct care staff shall be trained to respond to health emergencies. The training shall include the following:

1. Recognition of signs and symptoms and knowledge of actions required in medical emergencies;

2. Administration of first aid and cardiopulmonary resuscitation (CPR);

3. Methods of obtaining assistance;

4. Signs and symptoms of mental illness, retardation, and chemical dependency; and

5. General health care needs of residents, including communicable diseases. ]

## **6VAC35-71-920. [ Health trained personnel. (Reserved.)**

A. Health trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

B. The facility shall retain documentation of the training received by health trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section. ]

## **6VAC35-71-930. Consent to and refusal of health care services.**

A. The resident or parent or legal guardian, as applicable, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure; and (ii) the alternatives to it.

B. Health care services, as defined in [ 6VAC35-101-10 6VAC35-71-10 ] (definitions), shall be provided in accordance with § 54.1-2969 of the Code of Virginia.

C. Residents may refuse, in writing, medical treatment and care. This subsection does not apply to medication refusals that are governed by [ 6VAC35-41-1070 6VAC35-71-1070 ] (medication).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

## **6VAC35-71-940. Health screening at admission.**

Written procedure shall require that:

1. To prevent newly arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by health care personnel or health trained staff [ , using a health screening form that has been as approved by the department's health administrator ].

2. Residents admitted to the facility who are identified through the screening required in subdivision 1 of this section as posing a health risk to themselves or others [ are ] shall be separated from the facility's general population until they are no longer a risk. During the period of separation, the residents shall receive services approximating those available to the facility's general population, as deemed appropriate to their condition.



3. Immediate health care is provided to residents who need it.

**6VAC35-71-950. Tuberculosis screening.**

A. Within seven days of placement, each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

B. A screening assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall [~~comply with guidelines and recommendations (Screening for TB Infection and Disease, Policy TB 99-001)~~ be performed consistent with the current requirements ] of the Virginia Department of Health, Division of Tuberculosis Prevention and Control [ and the federal Department of Health and Human Services Centers for Disease Control and Prevention ], for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

**6VAC35-71-960. Medical examinations.**

A. Within five days of arrival at a JCC, all residents who are not directly transferred from another JCC shall be medically examined by a physician or a qualified health care practitioner operating under the supervision of a physician to determine if the resident requires medical attention or poses a threat to the health of staff or other residents. This examination shall include the following:

1. Complete medical, immunization, and psychiatric history;
2. Recording of height, weight, body mass index, temperature, pulse, respiration, and blood pressure;
3. Reports of medical laboratory testing and clinical testing results, as deemed medically appropriate, to determine both clinical status and freedom from communicable disease;
4. Medical examination, including gynecological assessment of females, when appropriate;
5. Documentation of immunizations administered; and
6. A plan of care, including initiation of treatment, as appropriate.

B. For residents transferring from one JCC to another, the report of a medical examination within the preceding 13 months shall be acceptable.

C. Each resident shall have an annual physical examination by or under the direction of a licensed physician.

**6VAC35-71-970. Dental examinations.**

A. Within seven days of arrival at a JCC, all residents who are not directly transferred from another JCC shall undergo a dental examination by a dentist.

B. For residents transferring from one JCC to another, the report of a dental examination within the preceding 13 months shall be acceptable.

C. Each resident shall have an annual dental examination by a dentist and routine prophylactic treatment.

**6VAC35-71-980. Immunizations.**

Each resident's immunizations shall be updated consistent with the regulations (12VAC5-90-110) of the Virginia Department of Health, Office of Epidemiology, Division of Immunization, at the time the record is reviewed. Exemptions for immunizations shall be granted consistent with state or federal law.

**6VAC35-71-990. Health screening for intrasystem transfers.**

A. All residents transferred between JCCs shall receive a medical, dental, and mental health screening by [ ~~health-trained~~ health trained ] or qualified health care personnel upon arrival at the facility. The screening shall include:

1. A review of the resident's health care record;
2. Discussion with the resident on his medical status; and
3. Observation of the resident.

B. All findings shall be documented and the resident shall be referred for follow-up care as appropriate.

**6VAC35-71-1000. Infectious or communicable diseases.**

A. A resident with a known communicable disease that can be transmitted person-to-person shall not be housed in the general population unless a licensed physician certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

B. The facility shall implement written procedures, approved by a medical professional, that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;
2. Require staff training in standard precautions, initially and annually thereafter; and
3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

C. Employees providing medical services shall be trained in tuberculosis control practices.

**6VAC35-71-1010. [ ~~Suicide prevention. (Reserved.)~~ ]**

~~Written procedure shall provide that (i) there is a suicide prevention and intervention program developed in consultation with a qualified medical or mental health professional and (ii) all direct care staff are trained and retrained in the implementation of the program. ]~~

**6VAC35-71-1020. Residents' health records.**

A. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-

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up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician.

B. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated.

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

C. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist based on the needs of the resident.

D. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

E. Each resident's health record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

F. Written procedure shall provide that residents' active health records shall be:

1. Kept confidential from unauthorized persons and in a file separate from the case record;

2. Readily accessible in case of emergency; and

3. Made available to authorized staff consistent with applicable state and federal laws.

## **6VAC35-71-1030. First aid kits.**

A. Each facility shall have first aid kits that shall be maintained in accordance with written procedures that shall address the (i) contents; (ii) location; and (iii) method of restocking.

B. The first aid kit shall be readily accessible for minor injuries and medical emergencies.

## **6VAC35-71-1040. Sick call.**

A. All residents shall have the opportunity daily to request health care services.

B. Resident requests for health care services shall be documented, reviewed for the immediacy of need and the intervention required, and responded to daily by qualified medical staff. Residents shall be referred to a physician consistent with established protocols and written or verbal orders issued by personnel authorized by law to give such orders.

C. The frequency and duration of sick call shall be sufficient to meet the health needs of the facility population. For the purpose of this section, sick call shall mean the evaluation and treatment of a resident in a clinical setting, either on or off site, by a qualified health care professional.

## **6VAC35-71-1050. Emergency medical services.**

A. Each JCC shall have access to 24-hour emergency medical, mental health, and dental services for the care of an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call.

B. Procedures shall include arrangements for the following:

1. Utilization of 911 emergency services;

2. Emergency transportation of residents from the facility;

3. Security procedures for the immediate transfer of residents when appropriate;

4. Use of one or more designated hospital emergency departments or other appropriate facilities consistent with the operational procedures of local supporting rescue squads;

5. Response by on-call health care providers to include provisions for telephonic consultation, guidance, or direct response as clinically appropriate; and

6. On-site first aid and crisis intervention.

C. Staff who respond to medical or dental emergencies shall do so in accordance with written procedures.

## **6VAC35-71-1060. Hospitalization and other outside medical treatment of residents.**

A. When a resident needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported safely and in accordance with applicable security procedures that are applied consistent with the severity of the medical condition; and

2. Staff shall escort and supervise residents when outside the facility for hospital care or other medical treatment, until appropriate security arrangements are made. This subdivision shall not apply to the transfer of residents under the Psychiatric Inpatient Treatment of Minors Act (§§ 16.1-355 et seq. of the Code of Virginia).

B. In accordance with applicable laws and regulations, the parent or legal guardian, as appropriate and applicable, shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.

**6VAC35-71-1070. Medication.**

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. [ of the Code of Virginia ]). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, except when otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall successfully complete a medication training program approved by the Board of Nursing and receive annual refresher training as required before they can administer medication.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders signed by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the [ ~~standards of practice outlined in the current medication aide training curriculum approved by the Board of Nursing~~ requirements of § 54.2-2408 of the Code of Virginia and the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) ].

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed or most recently refilled;
2. Drug name;
3. Schedule for administration, to include notation of each dose administered or refused;
4. Strength;
5. Route;
6. Identity of the individual who administered the medication; and
7. Dates the medication was discontinued or changed.

H. In the event of a medication incident or an adverse drug reaction, first aid shall be administered if indicated. As addressed in the physician's standing orders, staff shall promptly contact a physician, nurse, pharmacist, or poison control center and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. [ ~~For the purpose of this section, a A~~ ] medical incident [ ~~means shall mean~~ ] an error

made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication incident does not include a resident's refusal of appropriately offered medication.

I. Written procedures shall provide for (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and making any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a department's health administrator. Documentation of this approval shall be retained.

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals, which shall address:

1. Manner by which medication refusals are documented; and
2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

**6VAC35-71-1080. Release physical.**

Each resident shall be medically examined by a physician or qualified health care practitioner operating under the supervision of a physician within 30 days prior to release, unless exempted by the responsible physician based on a sufficiently recent full medical examination.

**Part VIII****Behavior [ ~~Management~~ Interventions ]****6VAC35-71-1090. [ ~~Behavior management.~~ (Reserved.)**

~~A. Each JCC shall implement a behavior management program approved by the director or designee. Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, resident and staff safety and security, and the resident's individual service plan.~~

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~~B. Written procedures governing this program shall provide the following:~~

- ~~1. List the behavioral expectations for the resident;~~
- ~~2. Define and list techniques that are used and available for use;~~
- ~~3. Specify the staff members who may authorize the use of each technique;~~
- ~~4. Specify the processes for implementing; and~~
- ~~5. Means of documenting and monitoring of the program's implementation.~~

~~C. When substantive revisions are made to the behavior management program, written information concerning the revisions shall be provided to the residents and direct care staff prior to implementation. ]~~

~~**6VAC35-71-1100. [ Behavior support contract. (Reserved.)**~~

~~A. When a resident exhibits a pattern of behavior indicating a need for behavioral support in addition to that provided in the facility's behavior management program, a written behavior support contract shall be developed, in accordance with written procedures, with the intent of assisting the resident to self-manage these behaviors. Procedures governing behavior support contracts shall address (i) the circumstances under which such contracts will be utilized and (ii) the means of documenting and monitoring the contract's implementation.~~

~~B. Prior to working alone with an assigned resident, each staff member shall review and be prepared to implement the resident's behavior support contract. ]~~

~~**6VAC35-71-1110. Disciplinary process.**~~

~~A. Each JCC shall follow written procedures for handling (i) minor resident misbehavior through an informal process and (ii) instances when a resident is charged with a violation of the rules of conduct through the formal process outlined below. Such procedures shall provide for (i) graduated sanctions and (ii) staff and resident orientation and training on the procedures.~~

~~B. When staff have reason to believe a resident has committed a rule violation that cannot be resolved through the facility's informal process, staff shall prepare a disciplinary report detailing the alleged rule violation. The resident shall be given a written copy of the report within 24 hours of the alleged rule violation.~~

~~C. After the resident receives notice of an alleged rule violation, the resident shall be provided the opportunity to admit or deny the charge.~~

- ~~1. The resident may admit to the charge in writing to a superintendent or designee who was not involved in the incident, accept the sanction prescribed for the offense, and waive his right to any further review.~~
- ~~2. If the resident denies the charge or there is reason to believe that the resident's admission is coerced or that the~~

~~resident does not understand the charge or the implication of the admission, the formal process for resolving the matter detailed in subsection D of this section shall be followed.~~

~~D. The formal process for resolving rule violations shall provide the following:~~

~~1. A disciplinary hearing to determine if substantial evidence exists to find the resident guilty of the rule violation shall be scheduled to occur no later than seven days, excluding weekends and holidays, after the rule violation. The hearing may be postponed with the resident's consent.~~

~~2. The resident alleged to have committed the rule violations shall be given at least 24 hours notice of the time and place of the hearing, but the hearing may be held within 24 hours with the resident's written consent.~~

~~3. The disciplinary hearing on the alleged rule violation shall:~~

~~a. Be conducted by an impartial and objective staff who shall determine (i) what evidence is admissible, (ii) the guilt or innocence of the resident, and (iii) if the resident is found guilty of the rule violation, what sanctions shall be imposed;~~

~~b. Allow the resident to be present throughout the hearing, unless the resident waives the right to attend, his behavior justifies exclusion, or another resident's testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented;~~

~~c. Permit the resident to make a statement and present evidence and to request relevant witnesses on his behalf. The reasons for denying such requests shall be documented;~~

~~d. Permit the resident to request a staff member to represent him and question the witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf; and~~

~~e. Be documented, with a record of the proceedings kept for six months.~~

~~4. A written record shall be made of the hearing disposition and supporting evidence. The hearing record shall be kept on file at the JCC.~~

~~5. The resident shall be informed in writing of the disposition and, if found guilty of the rule violation, the reasons supporting the disposition and the right to appeal.~~

~~6. If the resident is found guilty of the rule violation, a copy of the disciplinary report shall be placed in the case record.~~

~~7. The superintendent or designee shall review all disciplinary hearings and dispositions to ensure conformity with procedures and regulations.~~

8. The resident shall have the right to appeal the disciplinary hearing decision to the superintendent or designee within 24 hours of receiving the decision. The appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the results within three days. These time frames do not include weekends and holidays.

E. When it is necessary to place the resident in confinement to protect the facility's security or the safety of the resident or others, the charged resident may be confined pending the formal hearing for up to 24 hours. Confinement for longer than 24 hours must be reviewed at least once every 24 hours by the superintendent or designee who was not involved in the incident. For any confinement exceeding 72 hours, notice shall be made in accordance with 6VAC35-71-1140 D (room confinement).

### **6VAC35-71-1120. Timeout.**

A. Facilities that use a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided (timeout) shall implement procedures governing the following:

1. The conditions, based on the resident's chronological and developmental level, under which a resident may be placed in timeout;
2. The maximum period of timeout based on the resident's chronological and developmental level; and
3. The area in which a resident is placed.

B. A resident in timeout shall be able to communicate with staff.

C. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

D. Use of timeout and staff checks on the residents shall be documented.

### **6VAC35-71-1130. Physical restraint.**

A. Physical restraint shall be used as a last resort only after less restrictive behavior intervention techniques have failed or to control residents whose behavior poses a risk to the safety of the resident, others, or the public.

1. Staff shall use the least force necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with intent to inflict injury.
2. Trained staff members may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.

3. Physical restraint may be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint.

4. For the purpose of this section, physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.

B. Each JCC shall implement written procedures governing use of physical restraint that shall include:

1. A requirement for training in crisis prevention and behavior intervention techniques that staff may use to control residents whose behaviors pose a risk;
2. The staff position who will write the report and time frame;
3. The staff position who will review the report for continued staff development for performance improvement and the time frame for this review;
4. Methods to be followed should physical restraint, less intrusive behavior interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior; and
5. Identification of control techniques that are appropriate for identified levels of risk.

C. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date and time of the incident;
2. Staff involved;
3. Justification for the restraint;
4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;
5. Duration;
6. Description of method or methods of physical restraint techniques used;
7. Signature of the person completing the report and date; and
8. Reviewer's signature and date.

### **6VAC35-71-1140. Room confinement.**

A. Written procedures shall govern how and when residents may be confined to a locked room.

B. Whenever a resident is confined to a locked room, including but not limited to being placed in isolation, staff shall check the resident visually at least every 30 minutes and more frequently if indicated by the circumstances.

C. Residents who are confined to a locked room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise, outside of the locked room, every calendar day unless the resident's behavior or other circumstances justify an exception. The reasons for any such exception shall be

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approved in accordance with written procedures and documented.

D. If a resident is confined to a locked room for more than 24 hours, the superintendent or designee shall be notified.

E. If the confinement extends to more than 72 hours, the (i) confinement and (ii) the steps being taken or planned to resolve the situation shall be immediately reported to the department staff, in a position above the level of superintendent, as designated in written procedures. If this report is made verbally, it shall be followed immediately with a written, faxed, or secure email report in accordance with written procedures.

F. The superintendent or designee shall make personal contact with each resident who is confined to a locked room each day of confinement.

G. When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.

H. If the resident, after being confined to a locked room, exhibits self-injurious behavior (i) staff shall immediately consult with, and document that they have consulted with, a mental health professional; and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate.

## **6VAC35-71-1150. Isolation.**

A. When a resident is confined to a locked room for a specified period of time as a disciplinary sanction for a rule violation (isolation), the provisions of 6VAC35-71-1140 (room confinement) apply.

B. Room confinement during isolation shall not exceed five consecutive days.

C. During isolation, the resident is not permitted to participate in activities with other residents and all activities are restricted, with the exception of (i) eating, (ii) sleeping, (iii) personal hygiene, (iv) reading, (v) writing, and (vi) physical exercise as provided in 6VAC35-71-1140 (room confinement).

D. Residents who are placed in isolation shall be housed no more than one to a room.

## **6VAC35-71-1160. Administrative segregation.**

A. Residents who are placed in administrative segregation units shall be housed no more than two to a room. Single occupancy rooms shall be available when indicated for residents with severe medical disabilities, residents suffering from serious mental illness, sexual predators, residents who are likely to be exploited or victimized by others, and residents who have other special needs for single housing.

B. Residents who are placed in administrative segregation units shall be afforded basic living conditions approximating those available to the facility's general population and as provided for in written procedures. Exceptions may be made in accordance with written procedures when justified by clear and substantiated evidence. If residents who are placed in

administrative segregation are confined to a room or placed in isolation, the provisions of 6VAC35-71-1140 (room confinement) and 6VAC35-71-1150 (isolation) apply, as applicable.

C. For the purpose of this section, administrative segregation means the placement of a resident, after due process, in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. For the purpose of this section, protective custody shall mean the separation of a resident from the general population for protection from or of other residents for reasons of health or safety.

## **6VAC35-71-1170. Chemical agents.**

Chemical agents, such as pepper spray, shall not be used by staff for behavior management or facility security purposes.

## **6VAC35-71-1180. Mechanical restraints.**

A. Written procedure shall govern the use of mechanical restraints and shall specify:

1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and mobile restraint chair may be used;
2. That the superintendent or designee shall be notified immediately upon using restraints in an emergency situation;
3. That restraints shall never be applied as punishment;
4. That residents shall not be restrained to a fixed object or restrained in an unnatural position;
5. That each use of mechanical restraints, except when used to transport a resident, shall be recorded in the resident's case file or in a central log book; and
6. That the facility maintains a written record of routine and emergency distribution of restraint equipment.

B. If a JCC uses mechanical restraints, written procedure shall provide that (i) all staff who are authorized to use restraints shall receive department-approved training in their use, including procedures for checking the resident's circulation and checking for injuries; and (ii) only properly trained staff shall use restraints.

C. For the purpose of this section, mechanical restraint shall mean the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means to control his physical activities when the individual being restricted does not have the ability to remove the device.

## **6VAC35-71-1190. Monitoring residents placed in mechanical restraints.**

A. Written procedure shall provide that when a resident is placed in mechanical restraints staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and

2. Make a direct personal check on the resident at least every 15 minutes and more often if the resident's behavior warrants.

B. When a resident is placed in mechanical restraints for more than two hours cumulatively in a 24-hour period, with the exception of use in routine transportation of residents, staff shall immediately consult with a mental health professional. This consultation shall be documented.

C. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, (i) staff shall immediately consult with, and document that they have consulted with, a mental health professional and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate. Any such protocols shall be in compliance with the procedures required by 6VAC35-71-1200 (restraints for medical and mental health purposes).

**6VAC35-71-1200. Restraints for medical and mental health purposes.**

Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure should identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.

Part IX  
Private JCCs

**6VAC35-71-1210. Private contracts for JCCs.**

A. Each privately operated JCC shall abide by the requirement of (i) the Juvenile Corrections Private Management Act (§ 66-25.3 et seq. of the Code of Virginia), (ii) its governing contract, (iii) this chapter, and (iv) applicable department procedures, including but not limited to procedures relating to case management, the use of physical restraint and mechanical restraints, confidentiality, visitation, community relationships, and media access.

B. Each privately operated JCC shall develop procedures, approved by the department, to facilitate the transfer of the operations of the facility to the department in the event of the termination of the contract.

**6VAC35-71-1220. Privately operated JCCs.**

In addition to the other requirements of this chapter, privately operated JCCs shall house only residents who have been committed to the department and who have been properly transferred to the facility by the department, unless otherwise specified by contract with the department.

Part X  
Boot Camps

**6VAC35-71-1230. Definition of boot camp.**

For the purpose of this chapter, a boot camp shall mean a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill

and ceremony. Such programs utilize a form of military-style discipline whereby employees are authorized to respond to minor institutional offenses, at the moment they notice the institutional offenses being committed, by imposing immediate sanctions that may require the performance of some physical activity, such as pushups or some other sanction, as provided for in the program's written procedures.

**6VAC35-71-1240. Staff physical and psychological qualifications.**

The boot camp shall include in the qualifications for staff positions a statement of:

1. The physical fitness level requirements for each staff position; and
2. Any psychological assessment or evaluation required prior to employment.

**6VAC35-71-1250. Residents' physical qualifications.**

The boot camp shall have written procedures that govern:

1. Admission, including a required written statement from a physician that the resident meets the American Pediatric Society's guidelines to participate in contact sports and from a licensed mental health professional that the resident is an appropriate candidate for a boot camp program; and
2. Discharge should a resident be physically unable to keep up with the program.

**6VAC35-71-1260. Residents' nonparticipation.**

The boot camp shall have written procedures approved by the department for dealing with residents who are not complying with boot camp program requirements.

**6VAC35-71-1270. Program description.**

The boot camp shall have a written program description that states:

1. How residents' physical training, work assignment, education and vocational training, and treatment program participation will be interrelated;
2. The length of the boot camp program and the kind and duration of treatment and supervision that will be provided upon the resident's release from the residential program;
3. Whether residents will be cycled through the program individually or in platoons; and
4. The program's incentives and sanctions, including whether military or correctional discipline will be used. If military style discipline is used, written procedures shall specify what summary punishments are permitted.

[ FORMS (6VAC35-71)

Health Services Intake Medical Screening, HS 1/10.

Intrasystem Transfer Medical Review, HS 2/09. ]

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-71)

[ Screening for TB Infection and Disease, Policy TB-99-001  
(www.vdh.virginia.gov/epidemiology/DiseasePrevention/Pre

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[grams/Tuberculosis/Policies/screening.htm](#)), Virginia Department of Health.

Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC, Morbidity and Mortality Weekly Report, July 7, 2006, Vol. 55, No. RR-9  
(<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5509a1.htm>), Department of Health and Human Services, Centers for Disease Control and Prevention.

A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act, Developed by the Virginia Department of Social Services, Approved as Revised by the Board of Nursing, July 1996, September 2000.

Compliance Manual - Juvenile Correctional Centers, effective January 1, 2014, Virginia Department of Juvenile Justice ]

VA.R. Doc. No. R09-1820; Filed July 18, 2013, 4:46 p.m.

## Final Regulation

**Title of Regulation:** **6VAC35-101. Regulation Governing Juvenile Secure Detention Centers (adding 6VAC35-101-10 through 6VAC35-101-1270).**

**Statutory Authority:** §§ 16.1-309.9, 16.1-322.7, and 66-10 of the Code of Virginia.

**Effective Date:** January 1, 2014.

**Agency Contact:** Barbara Peterson-Wilson, Regulatory Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 588-3902, FAX (804) 371-6490, or email [barbara.peterson-wilson@djj.virginia.gov](mailto:barbara.peterson-wilson@djj.virginia.gov).

### Summary:

*This regulatory action consolidates all regulatory requirements relating to juvenile secure detention centers currently contained in the provisions of two regulations (6VAC35-51 and 6VAC35-140) into one new regulation (6VAC35-101) that will govern juvenile secure detention centers and includes a comprehensive review of all regulatory requirements for juvenile secure detention centers, but also for juvenile correctional centers and group homes and halfway houses. The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each distinct type of facility. After a comprehensive review, amendments were made to accommodate each type of facility's specific needs and to enhance program and service requirements to best provide for the residents.*

*Most provisions in the new regulation do not vary in any substantive way from those mandated by current regulation, board policy, or law. However, several new provisions include: (i) changing requirements for resident sleeping areas to allow more than four residents*

*to share a sleeping area; (ii) changing the number of CPR or first aid certified staff required to be on shift when residents are present; (iii) instituting an exception to the rule requiring staff to give residents privacy bathing, dressing, or using the bathroom so that suicidal residents can be supervised at all times; (iv) allowing greater flexibility in the timing of yearly fire inspections; and (v) eliminating the requirement that staff write an initial plan that outlines a structured program of care and a daily routine within three days of a resident's commitment.*

*The recommended changes since publication of the proposed regulation are in response to the public comments received. The majority of the changes relate to the adoption of requirements pertaining to the department's zero-tolerance policy regarding abuse in juvenile secure detention centers in the training and residents' rights sections. Other amendments relate to the reporting of serious incidents and suspected child abuse and neglect, staff and volunteer training and retraining, searches of residents, residents' rights, room confinement, restraints, and ensuring facilities follow guidelines from applicable agencies.*

*The following is a summary of the changes made to the proposed regulation:*

- 1. (6VAC35-101-80): Adds that notice of serious incidents will be done "in accordance with department procedures" and adds a requirement that the parents of all residents be notified if an incident at the facility occurs involving a resident's death (provided such notice does not violate confidentiality requirements or interfere with any investigation or prosecution).*
- 2. (6VAC35-101-90): Adds a requirement that procedures include "measures to be taken to ensure the safety of the resident and staff" when child abuse or neglect is suspected.*
- 3. (6VAC35-101-95): Adds clarifying language that reporting of criminal activity include any occurrence of physical abuse, sexual abuse, or sexual harassment.*
- 4. (6VAC35-101-190, 6VAC35-101-200, and 6VAC35-101-300): Adds requirement that staff who perform the duties involved in new resident orientation and admission be trained prior to performing such duties and amends the training requirements to clarify that initial training, retraining, and volunteer and intern training must include the actions that are prohibited in facilities, that is, abuse, discrimination, unsanitary living conditions, and denial of health care.*
- 5. (6VAC35-101-310): Changes the requirement that personnel records include "written references or notations of oral references" to "documentation of reference checks."*



6. (6VAC35-101-330): *Requires health care records to be maintained separately.*
7. (6VAC35-101-420): *Changes "areas" to "rooms" to reflect the requirement for "wet cells" in new construction (currently provided in the guide specifications for local facility construction required by the board's reimbursement regulation, 6VAC25-30).*
8. (6VAC35-101-450): *Adds medical waste as materials that must be stored, used, and disposed of in appropriate receptacles in accordance with applicable federal, state, and local requirements.*
9. (6VAC35-101-510 F): *Changes the 72-hour reporting requirement to a 24-hour reporting requirement to be consistent with the provisions of 6VAC35-101-80.*
10. (6VAC35-101-550): *Adds clarifying provisions regarding the ability to search "other individuals" at the facility for contraband.*
11. (6VAC35-101-560): *Adds requirement that all patdown and frisk searches be conducted by staff of the same sex of the resident being searched, except in emergencies.*
12. (6VAC35-101-650): *Adds clarifying language that any form of "physical abuse, sexual abuse, or sexual harassment are prohibited"; removes "involuntary" before "use of pharmacological restraints" as unnecessary language because use of any pharmacological restraint is prohibited; and adds a general statement prohibiting discrimination against residents in violation of the U.S. and Virginia constitutions and state and federal statutes and regulations.*
13. (6VAC35-101-655): *Adds a section requiring the facilities to assess whether a resident is at risk for physical or emotional harm and take preventative steps as needed to ensure the residents safety and well-being.*
14. (6VAC35-101-690): *Modifies the definition of legal representative to include attorneys visiting for the purpose of consultation upon the request of the resident.*
15. (6VAC35-101-700): *Requires clothes and shoes to be appropriate for indoor and outdoor use.*
16. (6VAC35-101-730): *Adds language clarifying that the exception for viewing a resident during certain activities for mental health purposes applies when the resident exhibits suicidal or self-injurious behaviors.*
17. (6VAC35-101-800): *Adds requirement that residents be oriented on their rights, including but not limited to the prohibited actions and adds language to require staff to inquire of the residents' parents or legal guardians regarding any immediate medical concerns or conditions the resident may have.*
18. (6VAC35-101-820): *Adds a requirement that the staff administering the mental health screening be trained.*

19. (6VAC35-101-1040): *Requires first aid kits to have an inventory of the contents.*

20. (6VAC35-101-1110): *Adds a requirement that administrative confinement be used only as a last resort when less restrictive measures are inadequate to keep residents safe.*

21. (6VAC35-101-1140): *Adds a clarifying statement that the 15-minute checks will check circulation as required by procedures and that, if a resident is in restraints for more than two hours in a 24-hour period, a medical professional, in addition to a mental health professional, should be consulted.*

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

## CHAPTER 101

### REGULATION GOVERNING JUVENILE SECURE DETENTION CENTERS

#### Part I

#### General Provisions

#### **6VAC35-101-10. Definitions.**

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

"Annual" means within 13 months of the previous event or occurrence.

"Behavior management" means those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations and resident and employee safety and security.

"Board" means the Board of Juvenile Justice.

"Case record" or "record" means written or electronic information relating to one resident and the resident's family, if applicable. This information includes, but is not limited to, social, medical, psychiatric, and psychological records; reports; demographic information; agreements; all correspondence relating to care of the resident; service plans with periodic revisions; aftercare plans and discharge summary; and any other information related to the resident.

"Contraband" means any item possessed by or accessible to a resident or found within a detention center or on its premises (i) that is prohibited by statute, regulation, or the facility's procedure, (ii) that is not acquired through approved channels or in prescribed amounts, or (iii) that may jeopardize the safety and security of the detention center or individual residents.

"Department" means the Department of Juvenile Justice.

"Detention center" or "secure juvenile detention center" means a local, regional, or state, publicly or privately

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operated secure custody facility that houses individuals who are ordered to be detained pursuant to the Code of Virginia. This term does not include juvenile correctional centers.

"Direct care staff" means the staff whose primary job responsibilities are (i) maintaining the safety, care, and well-being of residents, (ii) implementing the structured program of care and the behavior management program, and (iii) maintaining the security of the facility.

"Direct supervision" means the act of working with residents while not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, taking of hostages, major disturbances, escape, and bomb threats. Emergency does not include regularly scheduled employee time off or other situations that could be reasonably anticipated.

"Facility administrator" means the individual who has the responsibility for the on-site management and operation of the detention center on a regular basis.

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including, but not limited to, all findings, diagnoses, treatments, dispositions, and prescriptions and their administration.

"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering [ ~~health~~ health ] care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders.

"Individual service plan" or "service plan" means a written plan of action developed, revised as necessary, and reviewed at intervals to meet the needs of a resident. The individual service plan specifies (i) measurable short-term and long-term goals; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.

"Living unit" means the space in a detention center in which a particular group of residents [ ~~reside~~ resides ] that contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its

design, a building may contain one living unit or several separate living units.

"On duty" means the period of time an employee is responsible for the direct supervision of one or more residents.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of a resident, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a resident regularly resides; (iii) a person judicially appointed as a legal guardian of a resident; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Postdispositional detention program" means a program in a detention center serving residents who are subject to a sentence or dispositional order for placement in the detention center for a period exceeding 30 days pursuant to subdivision A 16 of § 16.1-278.8 and subsection B of § 16.1.284.1 of the Code of Virginia.

"Premises" means the tracts of land on which any part of a detention center is located and any buildings on such tracts of land.

"Regulatory authority" means the board or the department as designated by the board.

"Resident" means an individual who is confined in a detention center.

"Rules of conduct" means a listing of a detention center's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, about behaviors that are not permitted, and about the sanctions that may be applied when impermissible behaviors occur.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or in electronic form.

## **6VAC35-101-20. Applicability.**

Parts I (6VAC35-101-10 et seq.) through VIII (6VAC35-101-1070 et seq.) of this chapter apply to juvenile detention centers for both predispositional and postdispositional programs unless specifically excluded. Part IX (6VAC35-101-1160 et seq.) of this chapter only applies to detention centers operating postdispositional detention programs for residents sentenced for a period exceeding 30 days pursuant to subdivision A 16 of § 16.1-278.8 and subsection B of § 16.1.284.1 of the Code of Virginia.

## **6VAC35-101-30. Previous regulations terminated.**

This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities (6VAC 35-51) and the Standards for Juvenile Residential Facilities (6VAC35-140) for the regulation of all detention centers as defined herein. The Standards for the Interim Regulation of

Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for juvenile correctional centers and group homes, regulated by the board, until such time as the board adopts new regulations related thereto.

**6VAC35-101-40. Certification.**

A. The detention center shall comply with the provisions of the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20). The detention center shall:

1. Demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations;
2. Implement approved plans of action to correct findings of noncompliance [ ~~are being implemented~~ ]; and
3. Ensure no noncompliances may pose [ ~~an~~ any ] immediate and direct danger to residents.

B. Documentation necessary to demonstrate compliance with this chapter shall be maintained for a minimum of three years.

C. The current [ ~~license or~~ ] certificate shall be posted at all times in a place conspicuous to the public.

**6VAC35-101-50. Relationship to the regulatory authority.**

A. All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the regulatory authority.

B. A written report of any contemplated changes in operation that would affect the terms of the [ ~~license or~~ ] certificate or the continuing eligibility for [ ~~license or~~ ] certification shall be submitted to the regulatory authority. A change may not be implemented prior to approval by the regulatory authority.

**6VAC35-101-60. Relationship with the department.**

A. The director or designee shall be notified within five working days of any significant change in administrative structure or newly hired facility administrator.

B. Any of the following that may be related to the health [ , ] safety [ , ] or human rights of residents shall be [ ~~self-reported~~ reported ] to the director or designee within 10 days: (i) lawsuits against the detention center or its governing authority and (ii) settlements with the detention center or its governing authority.

**6VAC35-101-70. Variances.**

A. Board action may be requested by the facility administrator to relieve a detention center from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, either permanently or for a determined period of time, as provided in the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20).

B. Any such variance may not be implemented prior to approval of the board.

**[ 6VAC35-101-75. Operational procedures.**

The current program or operating procedure manual shall be readily accessible to all staff. ]

**6VAC35-101-80. Serious incident reports.**

A. The following events shall be reported [ , in accordance with department procedures, ] within 24 hours to (i) the applicable court service unit; (ii) either the parent or legal guardian, as appropriate and applicable; and (iii) the director or designee:

1. Any serious incident, accident, illness, or injury to the resident;
2. The death of a resident;
3. Any suspected case of child abuse or neglect at the detention center, on a detention center-sponsored event or excursion, or involving detention center staff as provided in [ ~~6VAC35-41-60~~ 6VAC35-101-90 ] (suspected child abuse and neglect);
4. Any disaster, fire, emergency, or other condition that may jeopardize the health, safety, and welfare of residents; and
5. Any absence from the detention center without permission.

B. The detention center shall notify the director or designee within 24 hours of any events detailed in subsection A of this section and all other situations required by the regulatory authority of which the facility has been notified.

C. [ If an incident involving the death of a resident occurs at the facility, the facility shall notify the parents or legal guardians, as appropriate and applicable, of all residents in the facility provided such notice does not violate any confidentiality requirements or jeopardize any law-enforcement or child protective services investigation or the prosecution of any criminal cases related to the incident.

D. ] The facility shall (i) prepare and maintain a written report of the events listed in subsections A and B of this section and (ii) submit a copy of the written report to the director or designee. The report shall contain the following information:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name or identifying information of the person who made the report to the applicable court service unit and to either the parent or legal guardian, as appropriate and applicable; and
6. The name or identifying information of the person to whom the report was made, including any law-enforcement or child protective service personnel.

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[ ~~D.~~ E. ] The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

[ ~~E.~~ F. ] In addition to the requirements of this section, any serious incident involving an allegation of child abuse or neglect at the detention center, at a detention center sponsored event, or involving detention center staff shall be governed by 6VAC35-101-90 (suspected child abuse or neglect).

## **6VAC35-101-90. Suspected child abuse or neglect.**

A. When there is reason to suspect that a resident is an abused or neglected child, the matter shall be reported immediately to the local department of social services as required by § 63.2-1509 of the Code of Virginia and in accordance with written procedures.

B. Written procedures shall be distributed to all staff members and shall at a minimum provide for:

1. Handling accusations against staff;
2. Reporting and documenting suspected cases of child abuse and neglect; [ ~~and~~ ]
3. Cooperating during any investigation [ ; and
4. Measures to be taken to ensure the safety of the residents and the staff ].

C. Any case of suspected child abuse or neglect shall be reported and documented as required in 6VAC35-101-80 (serious incident reports). The resident's record shall contain a written reference that a report was made.

## **[ 6VAC35-101-95. Reporting criminal activity.**

A. Written procedures shall require staff to report all known criminal activity by residents or staff to the facility administrator, including but not limited to any physical abuse, sexual abuse, or sexual harassment and the offenses listed in §§ 53.1-203 (felonies by prisoners); 18.2-55 (bodily injuries caused by prisoners); 18.2-48.1 (abduction by prisoners); 18.2-64.1 (carnal knowledge of certain minors); 18.2-64.2 (carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender); and 18.2-477.1 (escapes from juvenile facility) of the Code of Virginia.

B. The facility administrator, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement, child protective services, and the department, if applicable and appropriate, of suspected criminal violations by residents or staff. Suspected criminal violations relating to the health and safety or human rights of residents shall be reported to the director or designee.

C. The detention center shall assist and cooperate with the investigation of any such complaints and allegations as necessary. ]

## **6VAC35-101-100. Grievance procedure.**

A. Written procedure shall provide that residents are oriented to and have continuing access to a grievance procedure that provides for:

1. Resident participation in the grievance process with assistance from staff upon request;
2. Investigation of the grievance by an objective employee who is not the subject of the grievance;
3. Documented, timely responses to all grievances with the reasons for the decision;
4. At least one level of appeal;
5. Administrative review of grievances;
6. Protection from retaliation or threat of retaliation for filing a grievance; and
7. Hearing of an emergency grievance within eight hours.

B. Each resident shall be oriented to the grievance procedure in an age or developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language and (ii) posted in an area easily accessible to residents and their parents and legal guardians.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

## Part II

### Administrative and Personnel

#### Article 1

#### General Provisions

## **6VAC35-101-110. Responsibilities of the governing authority.**

A. The detention center's governing body or authority (governing authority) shall be clearly identified.

B. The governing authority shall appoint a facility administrator to whom it delegates the authority and responsibility for the on-site administrative direction of the detention center.

C. A written decision-making plan shall be developed and implemented and shall provide for a staff person with the qualifications of a facility administrator to be designated to assume the temporary responsibility for the operation of the detention center. Each plan shall include an organizational chart.

D. Written procedures shall be developed and implemented to monitor and evaluate service quality and effectiveness on a systematic and on-going basis. Improvements shall be implemented when indicated.

## **6VAC35-101-120. Insurance.**

A. Documentation of the following insurance coverage shall be maintained:

1. Liability insurance covering the premises and the detention center's operations, including all employees and volunteers, if applicable.
2. Insurance necessary to comply with Virginia's minimum insurance requirements for all vehicles used to transport residents, including vehicles owned by staff.

B. Staff who use personal vehicles for official business, including transporting residents, shall be informed of the requirements to provide and document insurance coverage for such purposes.

**6VAC35-101-130. Participation of residents in human research.**

A. Written procedures approved by its governing authority shall govern the review, approval, and monitoring of human research. Human research means any systematic investigation, involving a resident or a resident's parents, guardians, or family members as the subject of the research, which may expose the subject to physical or psychological injury and which departs from the application of established and accepted therapeutic methods appropriate to meet the individual's needs. Human research does not include statistical analysis of information readily available on the subject that does not contain any identifying information or research exempted by federal research regulations pursuant to 45 CFR 46.101(b).

B. Information on residents shall be maintained as provided in 6VAC35-101-330 (maintenance of residents' records) and all records and information related to the human research shall be kept confidential in accordance with applicable laws and regulations.

C. The procedures may require periodic progress reports of any research project and a formal final report of all completed research projects.

Article 2  
Hiring

**6VAC35-101-140. Job descriptions.**

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

1. Job title or position;
2. Duties and responsibilities of the incumbent;
3. Job title or identification of the immediate supervisor; and
4. Minimum education, experience, knowledge, skills, and abilities required for [ ~~entry-level~~ entry-level ] performance of the job.

B. A copy of the job description shall be given to each person assigned to a position prior to assuming that position's duties.

**6VAC35-101-150. Qualifications.**

A. Detention centers subject to (i) the rules and regulations of the governing authority or (ii) the rules and regulations of a local government personnel office shall develop written minimum entry-level qualifications in [ ~~accordance~~ accordance ] with the rules and regulations of the supervising personnel authority. Detention centers not subject to rules and regulations of the governing authority or a local government personnel office shall follow the minimum entry-level

qualifications of the Virginia Department of Human Resource Management.

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

**[ 6VAC35-101-155. Employee tuberculosis screening and follow-up.**

A. On or before the employee's start date at the facility and at least annually thereafter each employee shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee comes into contact with a known case of infectious tuberculosis; and
2. The employee develops chronic respiratory symptoms of three weeks' duration.

C. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.

D. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

E. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

F. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed in accordance with any current recommendations of the Virginia Department of Health's Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention. ]

**6VAC35-101-160. Physical examination.**

When the qualifications for a position require a given set of physical abilities, all persons selected for such positions shall be examined by a physician at the time of employment to ensure that they have the level of medical health or physical ability required to perform assigned duties. Persons hired into positions that require a given set of physical abilities may be reexamined annually in accordance with written procedures.

**6VAC35-101-170. Employee and volunteer background checks.**

A. Except as [ ~~required by subsection C~~ provided in subsection B of this section ], all persons who (i) accept a position of employment at, (ii) volunteer on a regular basis

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and will be alone with a resident in the performance of their duties, or (iii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of that person's duties shall undergo the following background checks in accordance with § 63.2-1726 of the Code of Virginia to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents:

1. A reference check;
2. A criminal history record check;
3. Fingerprint checks with the Virginia State Police and Federal Bureau of [ Investigations Investigation ] (FBI);
4. A central registry check with Child Protective Services; and
5. A driving record check if applicable to the individual's job duties.

B. To minimize vacancy time, when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;
2. The applicant is given written notice that continued employment is contingent on the fingerprint check results [ as ] required by subdivision A 3 of this section; and
3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when under the direct supervision of staff whose background checks have been completed until such time as all the requirements of this section are completed.

C. Documentation of compliance with this section shall be retained in the individual's personnel record as provided in 6VAC35-101-310 (personnel records).

D. Written procedures shall provide for the supervision of nonemployee persons, who are not subject to the provisions of subsection A of this section who have contact with residents.

## Article 3

### Employee Orientation and Training

#### **6VAC35-101-180. Required initial orientation.**

A. Initial orientation shall be provided to all full-time and part-time staff, relief staff, and contractors who provide services to residents on a regular basis, in accordance with each position's job description.

B. Before the expiration of the individual's seventh work day at the facility, each employee shall be provided with a basic orientation on the following:

1. The facility;
2. The population served;
3. The basic objectives of the program;
4. The facility's organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures as provided for in 6VAC35-101-510 (emergency and evacuation procedures);

6. The practices of confidentiality;

7. The residents' rights;

8. The basic requirements of and competencies necessary to perform in his positions;

9. The facility's program philosophy and services;

10. The facility's behavior management program as provided for in 6VAC35-101-1070 (behavior management);

11. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;

12. The residents' rules of conduct and responsibilities;

13. The residents' disciplinary process as provided for in 6VAC35-101-1080 (disciplinary process);

14. The residents' grievance procedures as provided for in 6VAC35-101-100 (grievance procedure);

15. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect);

16. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases); and

17. Documentation requirements as applicable to [ his the position's ] duties.

C. Volunteers shall be oriented in accordance with 6VAC35-101-300 (volunteer and intern orientation and training).

#### **6VAC35-101-190. Required initial training.**

A. Each full-time and part-time employee and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the [ jobs position's duties ].

1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

2. Contractors shall receive training required to perform their position responsibilities in a detention center.

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents shall complete training in the following areas:

1. Emergency preparedness and response as provided for in 6VAC35-101-510 (emergency and evacuation procedures);

2. The facility's behavior management program as provided for in 6VAC35-101-1070 (behavior management);

3. The residents' rules of conduct and the rationale for the rules;

4. The facility's behavior intervention procedures, with physical and mechanical restraint training required as applicable to their duties and as required by subsection D of this section;

5. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect);

6. Maintaining appropriate professional boundaries and relationships;

7. Interaction among staff and residents;

8. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);

9. Residents' rights [ , including but not limited to prohibited actions provided for in 6VAC35-101-650 (prohibited actions) ];

10. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases); and

11. Procedures applicable to the employees' position and consistent with their work profiles.

[ ~~D. C.~~ ] Employees who are authorized by the facility administrator to restrain a resident, as provided for in 6VAC35-101-1090 (physical restraint) and 6VAC35-101-1130 (mechanical restraints), shall be trained in the facility's approved restraint techniques within 90 days of such authorization and prior to applying any restraint techniques.

[ ~~E. D.~~ ] Employees who administer medication shall [ , prior to such administration, as provided for in 6VAC35-101-1060 (medication), and in accordance with the provisions of § 54.1-3408 of the Code of Virginia, either (i) ] have [  ~~, prior to such administration and as provided for in 6VAC35-101-1060 (medication), ] successfully completed a medication training program approved by the Board of Nursing or [ (ii) ] be licensed by the Commonwealth of Virginia to administer medication.~~

[ ~~F. E.~~ ] When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

[ ~~G. F.~~ ] Volunteers and interns shall be trained in accordance with 6VAC35-101-300 (volunteer and intern orientation and training).

[ ~~G.~~ ] Employees who perform the duties required in 6VAC35-101-800 (admission and orientation) shall be trained in the requirements contained therein. ]

**6VAC35-101-200. Retraining.**

A. Each full-time and part-time employee and relief staff shall complete retraining that is specific to the individual's occupational class, the position's job description, and addresses any professional development needs.

B. All full-time and part-time employees and relief staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures as provided for in 6VAC35-101-480 (emergency and evacuation procedures).

C. All direct care staff shall receive at least 40 hours of training annually that shall include training on the following:

1. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);

2. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases);

3. Maintaining appropriate professional relationships;

4. Interaction among staff and residents;

5. [ Residents' rights, including but not limited to the prohibited actions provided for in 6VAC35-101-650 (prohibited actions);

6. ] Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and

[ ~~6-7.~~ ] Behavior intervention procedures.

D. All staff approved to apply physical restraints, as provided for in 6VAC35-101-1090 (physical restraint) shall be trained as needed to maintain the applicable current certification.

E. All staff approved to apply mechanical restraints shall be retrained annually as required by 6VAC35-101-1130 (mechanical restraints).

F. Employees who administer medication [ , as provided for in 6VAC35-101-1060 (medication), ] shall complete [ an ] annual refresher training [  ~~as provided for in 6VAC35-101-1060 (medication) ] .~~

G. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

H. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements.

Article 4  
Personnel

**6VAC35-101-210. Written personnel procedures.**

Written personnel procedures approved by the governing authority or facility administrator shall be developed, implemented, and readily accessible to each staff member.

**6VAC35-101-220. Code of ethics.**

A written code of ethics shall be available to all employees.

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## **6VAC35-101-230. [ ~~Reporting criminal activity.~~ (Reserved.)**

~~A. Written procedures shall require staff to report all known criminal activity by residents or staff to the facility administrator including, but not limited to, offenses listed in §§ 53.1-203 (felonies by prisoners); 18.2-55 (bodily injuries caused by prisoners); 18.2-48.1 (abduction by prisoners); 18.2-64.1 (carnal knowledge of certain minors); 18.2-64.2 (carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender); and 18.2-477.1 (escapes from juvenile facility) of the Code of Virginia.~~

~~B. The facility administrator, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement, child protective services, and the department, if applicable and appropriate, of suspected criminal violations by residents or staff. Suspected criminal violations relating to the health and safety or human rights of residents shall be reported to the director or designee.~~

~~C. The detention center shall assist and cooperate with the investigation of any such complaints and allegations as necessary. ]~~

## **6VAC35-101-240. Notification of change in driver's license status.**

Staff whose job responsibilities may involve transporting residents shall be required to (i) maintain a valid driver's license and (ii) report to the facility administrator or designee any change in their driver's license status including but not limited to suspensions, restrictions, and revocations.

## **6VAC35-101-250. Political activity.**

Written procedures governing any campaigning, lobbying, and political activities by employees that are consistent with applicable statutes and state or local policies shall be developed and implemented. The procedure shall be made available to all employees.

## **6VAC35-101-260. Physical or mental health of personnel.**

When an individual poses a direct threat to the health and safety of a resident, others at the facility, or the public or is unable to perform essential job-related functions, that individual shall be removed immediately from all duties involved in the direct care or direct supervision of residents. The facility may require a medical or mental health evaluation to determine the individual's fitness for duty prior to returning to duties involving the direct care or direct supervision of residents. The results of any medical information or documentation of any disability-related inquiries shall be maintained separately from the employee's personnel records maintained in accordance with 6VAC35-101-310 (personnel records). For the purpose of this section a direct threat means a significant risk of substantial harm.

## Article 5 Volunteers

### **6VAC35-101-270. Definition of volunteers or interns.**

For the purpose of this chapter, volunteer or intern means any individual or group who of their own free will provides goods and services without competitive compensation.

### **6VAC35-101-280. Selection and duties of volunteers and interns.**

A. Any detention center that uses volunteers or interns shall develop and implement written procedures governing their selection and use. Such procedures shall provide for the objective evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be clearly defined in writing.

D. Volunteers and interns shall neither be responsible for the duties of direct care staff nor for the direct supervision of the residents.

### **6VAC35-101-290. Background checks for volunteers and interns.**

A. Any individual who (i) volunteers on a regular basis or is an intern and (ii) will be alone with a resident in the performance of that person's duties shall be subject to the background check requirements in 6VAC35-101-170 A (employee and volunteer background checks).

B. Documentation of compliance with the background check requirements shall be maintained for each intern and volunteer for whom a background [ ~~investigation~~ check ] is required. Such records shall be kept in accordance with 6VAC35-101-310 (personnel records).

C. A detention center that uses volunteers or interns shall have procedures for supervising volunteers or interns, on whom background checks are not required or whose background checks have not been completed, who have contact with residents.

### **6VAC35-101-300. Volunteer and intern orientation and training.**

A. Volunteers and interns shall be provided with a basic orientation on the following:

1. The facility;
2. The population served;
3. The basic objectives of the facility;
4. The facility's organizational structure;
5. Security, population control, emergency, emergency preparedness, and evacuation procedures;
6. The practices of confidentiality;



- 7. The residents' rights [ , including but not limited to the prohibited actions provided for in 6VAC35-101-650 (prohibited actions) ]; and
- 8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

- 1. Any procedures that are applicable to their duties and responsibilities; and
- 2. Their duties and responsibilities in the event of a facility evacuation as provided for in 6VAC35-101-510 (emergency and evacuation procedures).

Article 6

[ Employee ] Records

**6VAC35-101-310. Personnel records.**

A. Separate up-to-date written or automated personnel records shall be maintained on each (i) employee and (ii) volunteer or intern on whom a background check is required.

B. The records of each employee shall include:

- 1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;
- 2. Educational background and employment history;
- 3. [ ~~Written references or notations of oral references~~ Documentation of required reference check ];
- 4. Annual performance evaluations;
- 5. Date of employment for each position held and separation date;
- 6. Documentation of compliance with requirements of Virginia law regarding child protective services and criminal history background investigations;
- 7. Documentation of the verification of any educational requirements and of professional certification or licensure, if required by the position;
- 8. Documentation of all training required by this chapter and any other training received by individual staff; and
- 9. A current job description.

C. If applicable, health records, including reports of any required health examinations, shall be maintained separately from the other records required by this section.

D. Personnel records on contract service providers and volunteers and interns may be limited to the verification of the completion of any required background checks as required by 6VAC35-101-170 (employee and volunteer background checks).

**6VAC35-101-320. [ Employee tuberculosis screening and follow-up. (Reserved.)**

~~A. On or before the employee's start date at the facility and at least annually thereafter each employee shall submit the~~

~~results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.~~

~~B. Each employee shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.~~

~~C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:~~

- 1. ~~The employee comes into contact with a known case of infectious tuberculosis; and~~
- 2. ~~The employee develops chronic respiratory symptoms of three weeks' duration.~~

~~D. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.~~

~~E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).~~

~~F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.~~

~~G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed in compliance with Screening for TB Infection and Disease, Policy 99-001, Virginia Department of Health, Division of Tuberculosis Prevention and Control.~~

Article 7

Residents' Records ]

**6VAC35-101-330. Maintenance of residents' records.**

A. A separate written or automated case record shall be maintained for each resident that shall include all correspondence and documents received by the detention center relating to the care of that resident and documentation of all case management services provided.

B. A separate health record [ ~~may shall~~ ] be kept on each resident. The resident's active health records shall be kept in accordance with 6VAC35-101-1030 (residents' health care records) [ , this section, ] and applicable laws and regulations.

C. Each case record and health record shall be kept (i) up to date, (ii) in a uniform manner, and (iii) confidential from unauthorized access. Case records shall be released in accordance with §§ 16.1-300 and 16.1-309.1 of the Code of Virginia and applicable state and federal laws and regulations.

D. Written procedures shall provide for the management of all records, written and automated, and shall describe

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confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquisition of information only to persons legally authorized according to federal and state laws;
2. If automated records are utilized, the procedures shall address:
  - a. How records are protected from unauthorized access;
  - b. How records are protected from unauthorized Internet access;
  - c. How records are protected from loss;
  - d. How records are protected from unauthorized alteration; and
  - e. How records are backed up.
3. Security measures to protect records from (i) loss, unauthorized alteration, inadvertent or unauthorized access, or disclosure of information; and (ii) during transportation of records between service sites;
4. Designation of person responsible for records management; and
5. Disposition of records in the event the detention center ceases to operate.

E. The procedure shall specify what information is available to the resident.

F. Active and closed written records shall be kept in secure locations or compartments that are accessible to authorized staff and shall be protected from unauthorized access, fire, and flood.

G. All case records shall be retained as governed by The Library of Virginia.

## **6VAC35-101-340. Face sheet.**

A. At the time of admission each resident's record shall include, at a minimum, a completed face sheet that contains the following:

1. The resident's full name, last known residence, birth date, birthplace, [ ~~gender~~ sex ], race, unique numerical identifier, religious preference, and admission date; and
2. Names, addresses, and telephone numbers of the applicable court service unit, emergency contacts, and parents or legal guardians, as appropriate and applicable.

B. Information shall be updated when changes occur.

C. Upon discharge, the (i) date of discharge and (ii) name of the person to whom the resident was discharged, if applicable, shall be added to the face sheet.

### Part III Physical Environment

## **6VAC35-101-350. Buildings and inspections.**

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and

approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to timely inspect the detention center's buildings and equipment, documentation of the facility's request to schedule the annual inspection as well as documentation of any necessary follow-up with fire prevention authorities shall be maintained.

C. A current copy of the detention center's annual inspection and approval, in accordance with state and local inspection laws, regulations, and ordinances, of the systems listed below shall be maintained. These inspections shall be of the:

1. General sanitation;
2. Sewage disposal system;
3. Water supply; and
4. Food service operations.

D. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the regulatory authority and by other appropriate regulatory agencies. Any planned construction, renovation, enlargement, or expansion of a detention center shall follow the submission and approval requirements of the [ ~~Regulations for~~ Regulation Governing ] State Reimbursement of Local Juvenile Residential Facility Costs (6VAC35-30) and of any other applicable regulatory authorities.

## **6VAC35-101-360. Equipment and systems inspections and maintenance.**

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent such requirements, in accordance with a schedule that is approved by the facility administrator. Testing of such equipment and systems shall, at a minimum, be conducted quarterly.

B. Whenever safety, emergency, and communications equipment or a system is found to be defective, immediate steps shall be taken to rectify the situation and to repair, remove, or replace the defective equipment.

## **6VAC35-101-370. Alternate power source.**

The facility shall have access to an alternate power source for use in an emergency.

## **6VAC35-101-380. Heating and cooling systems and ventilation.**

A. Heat shall be distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

**6VAC35-101-390. Lighting.**

A. Sleeping and activity areas shall provide natural lighting.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. There shall be night lighting sufficient to observe residents.

D. Operable flashlights or battery powered lanterns shall be accessible to each direct care staff member on duty.

E. Outside entrances and parking areas shall be lighted.

**6VAC35-101-400. Plumbing and water supply; temperature.**

A. Plumbing shall be maintained in operational condition, as designed.

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

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100°F to 120°F.

**6VAC35-101-410. Drinking water.**

A. In all detention centers constructed after January 1, 1998, all sleeping areas shall have fresh drinking water for the residents' use.

B. All activity areas shall have potable drinking water available for the residents' use.

**6VAC35-101-420. Toilet facilities.**

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

~~B. A. ] There shall be toilet facilities available for resident use in all sleeping [ areas rooms ] for each detention center constructed after January 1, 1998.~~

~~C. B. ] There shall be at least one toilet, one hand basin, and one shower or bathtub for every eight residents for detention centers constructed before July 1, 1981. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981.~~

~~D. C. ] There shall be at least one bathtub in each facility.~~

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

**6VAC35-101-430. Sleeping areas.**

A. Males and females shall have separate sleeping rooms.

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

C. Sleeping quarters established, constructed, or structurally modified after July 1, 1981, shall have:

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

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

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

D. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

E. The environment of sleeping areas shall be, during sleeping hours, maintained in a manner that is conducive to sleep and rest.

**6VAC35-101-440. Furnishings.**

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

**6VAC35-101-450. Disposal of garbage and management of hazardous materials.**

A. Provision shall be made for the collection and legal disposal of all garbage and waste materials.

B. All flammable, toxic, [ medical, ] and caustic materials within the facility shall be stored, used, and disposed of in appropriate receptacles and in accordance with federal, state, and local requirements.

**6VAC35-101-460. Smoking prohibition.**

Tobacco products, including cigarettes, cigars, pipes, and smokeless tobacco, such as chewing tobacco or snuff, shall not be used by staff or visitors in any areas of the facility or its premises where residents may see or smell the tobacco product.

**6VAC35-101-470. Space utilization.**

A. Each detention center shall provide for the following:

1. Indoor and outdoor recreation areas;

~~2. School classrooms when a school program is operated at the detention center developed in consultation with the local educational authorities;~~

~~3. 2. ] Kitchen facilities and equipment for the preparation and service of meals;~~

~~4. 3. ] Space and equipment for laundry, if laundry is done at the detention center;~~

~~5. 4. ] A designated visiting area that permits informal communication between residents and visitors, including opportunity for physical contact in accordance with written procedures;~~

~~6. 5. ] Storage space for items such as first aid equipment, household supplies, recreational equipment, and other materials;~~

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[ 7- 6. ] Space for administrative activities including, as appropriate to the program, confidential conversations and [ ~~provision for the~~ ] storage of records and materials; and

[ ~~8- 7. ] A central medical room with medical examination facilities developed and equipped in consultation with the health authority.~~

B. If a school programs is operated at the facility, school classrooms shall be designed in consultation with appropriate education authorities to comply with applicable state and local requirements.

C. Spaces or areas may be interchangeably utilized but shall be in functional condition for the designated purposes.

## **6VAC35-101-480. Kitchen operation and safety.**

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

B. Written procedures shall govern access to all areas where food or utensils are stored and the inventory and control of all culinary equipment to which the residents reasonably may be expected to have access.

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

D. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in laundering table and kitchen linens.

E. Residents shall not be permitted to work in the detention center's food service.

## **6VAC35-101-490. Maintenance of the buildings and grounds.**

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This includes, but is not limited to, (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings and (ii) all areas where residents, staff, and visitors reasonably may be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

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

## **6VAC35-101-500. Animals on the premises.**

A. Animals maintained on the premises shall be housed at a reasonable distance from sleeping, living, eating, and food preparation areas, as well as a safe distance from water supplies.

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

C. The premises shall be kept reasonably free of stray domestic animals.

D. Pets shall be provided with clean sleeping areas and adequate food and water.

## Part IV Safety and Security

### **6VAC35-101-510. Emergency and evacuation procedures.**

A. A written emergency preparedness and response plan shall be developed. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks; (ii) communitywide plans to address different disasters and emergency situations; and (iii) assistance, if any, that the local emergency management office will provide to the detention center in an emergency;

2. Analysis of the detention center's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for provision of administrative direction and management of response activities; coordination of logistics during the emergency; communications; life safety of employees, contractors, interns, volunteers, visitors, and residents; property protection; fire protection service; community outreach; and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, interns, volunteers, and visitors; equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying parents and legal guardians, as applicable and appropriate;

g. Alerting emergency personnel and sounding alarms;

h. Locating and shutting off utilities when necessary; and

i. Providing for a planned, personalized means of effective egress for residents who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. Emergency preparedness and response training shall be developed for all employees to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. Such training shall be conducted in accordance with 6VAC35-101-180 (required initial orientation) through 6VAC35-101-200 (retraining) and include the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency information for residents including medical information; and
5. Utilizing community support services.

C. Contractors and volunteers shall be oriented in their responsibilities in implementing the evacuation plan in the event of an emergency. Such orientation shall be in accordance with the requirements of 6VAC35-101-180 (required initial orientation) and 6VAC35-101-300 (volunteer and intern orientation and training).

D. The annual review of the emergency preparedness plan shall be documented, and revisions shall be made as deemed necessary. Such revisions shall be communicated to employees, contractors, interns, and volunteers and incorporated into training for employees, contractors, interns and volunteers, and orientation of residents to services.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, appropriate actions shall be taken to protect the health, safety, and welfare of the residents and to remedy the conditions as soon as possible.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the detention center first should respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the disaster or emergency shall be reported to the legal guardian and the applicable court service unit and the conditions at the detention center and the disaster or emergency shall be reported to the director or designee as soon as possible, but no later than [ ~~72~~ 24 ] hours after the incident occurs [ and in accordance with 6VAC35-101-80 (serious incident reports) ].

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they can be seen easily by staff and residents.

H. The responsibilities of the residents in implementing the emergency and evacuation procedures shall be communicated

to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the detention center's emergency procedures) shall be conducted each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;
2. Practice in evacuating buildings;
3. Practice in alerting emergency authorities;
4. Simulated use of emergency equipment; and
5. Practice in accessing resident emergency information.

K. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;
2. Date and time of drill;
3. Amount of time to evacuate the buildings;
4. Specific problems encountered;
5. Staff tasks completed including:
  - a. Head count, and
  - b. Practice in notifying emergency authorities; and
6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

L. One staff member shall be assigned to ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

**6VAC35-101-520. Control center.**

To maintain the internal security, a control center that is secured from residents' access shall be staffed 24 hours a day and shall integrate all external and internal security functions and communications networks.

**6VAC35-101-530. Control of perimeter.**

A. In accordance with a written plan, the detention center's perimeter shall be controlled by appropriate means to provide that residents remain within the perimeter and to prevent unauthorized access by the public.

B. Pedestrians and vehicles shall enter and leave at designated points in the perimeter.

**6VAC35-101-540. Escapes.**

Written procedure shall govern staff actions to be taken regarding escapes and any absence from the facility without permission. Any such procedure shall provide for the release of information consistent with the provisions of § 16.1-309.1 of the Code of Virginia.

**6VAC35-101-550. Contraband.**

Written procedure shall provide for the control, detection, and disposition of contraband. Such procedures shall govern

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searches of residents, as required by 6VAC35-101-560 (searches of residents) [ , and other individuals ], and searches of the premises and shall provide for respecting residents' rights.

## **6VAC35-101-560. Searches of residents.**

A. Written procedures shall govern searches of residents, including [ ~~patdowns~~ patdown ] and frisk searches, strip searches, and body cavity searches, and shall include the following:

1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.
2. Searches are conducted only by personnel who are authorized to conduct such searches.
3. The resident shall not be touched any more than is necessary to conduct the search.

B. [ Patdown and frisk searches shall be conducted by employees of the same sex as the resident being searched, except in emergencies.

C. ] Strip searches and visual inspections of the vagina and anal cavity areas shall be subject to the following:

1. The search shall be performed by personnel of the same sex as the resident being searched;
2. The search shall be conducted in an area that ensures privacy; and
3. Any witness to the search shall be of the same [ ~~gender~~ sex ] as the resident.

[ ~~C. D. ] Manual and instrumental searches of the anal cavity or vagina, not including medical examinations or procedures conducted by medical personnel for medical purposes, shall be:~~

1. Performed only with the written authorization of the facility administrator or by a court order;
2. Conducted by a qualified medical professional;
3. Witnessed by personnel of the same [ ~~gender~~ sex ] as the resident; and
4. Fully documented in the resident's medical file.

## **6VAC35-101-570. Communications systems.**

A. There shall be a means for communicating between the control center and living areas.

B. The detention center shall be able to provide communications in an emergency.

## **6VAC35-101-580. Telephone access and emergency numbers.**

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

B. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

C. An emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff or law-enforcement officials.

## **6VAC35-101-590. Keys.**

A. The detention center shall have a written key control plan to keep keys secure at all times.

B. Fire and emergency keys shall be instantly identifiable by sight and touch.

C. There shall be different master keys for the interior security and outer areas.

## **6VAC35-101-600. Weapons.**

Written procedures shall be developed and implemented to govern the possession and use of firearms, pellet guns, air guns, and other weapons on the detention center's premises. The procedure shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises unless the weapons are:

1. In the possession of and use by authorized law-enforcement personnel admitted to facilities in response to emergencies; or
2. Stored in secure weapons lockers outside the secure perimeter of the facility by law-enforcement personnel conducting official business at the facility.

## **6VAC35-101-610. Area and equipment restrictions.**

Written procedure shall govern the inventory and control of all security, maintenance, recreational, and medical equipment of the detention center to which residents reasonably may be expected to have access.

## **6VAC35-101-620. Power equipment.**

Written safety rules shall be developed and implemented for the use and maintenance of power equipment.

## **6VAC35-101-630. Transportation.**

A. Each detention center shall have transportation available or make the necessary arrangements for routine and emergency transportation.

B. There shall be written safety rules for transportation of residents and for the use of vehicles.

C. Written procedure shall provide for the verification of appropriate licensure for staff whose duties involve transporting residents.

## **6VAC35-101-640. Transportation of residents; transfer to department.**

A. Residents shall be transported in [ ~~accord~~ accordance ] with Guidelines for Transporting Juveniles in Detention issued by the board in [ ~~accord~~ accordance ] with § 16.1-254 of the Code of Virginia.

B. When a resident is transported to the department from a detention center, all information pertaining to the resident's medical, educational, behavioral, and family circumstances during the resident's stay in detention shall be sent either in a

written document or electronically to the department (i) with the resident, if the detention center is given at least 24 hours notice; or (ii) within 24 hours after the resident is transported, if such notice is not given.

Part V  
Residents' Rights

**6VAC35-101-650. Prohibited actions.**

[ A. ] The following actions are prohibited:

1. [ ~~Discrimination in violation of the Constitution of the United States, the Constitution of the Commonwealth of Virginia, and state and federal statutes and regulations.~~ ]

2. ] ~~Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;~~

[ ~~2. 3. ] Denial of contacts and visits with the resident's attorney, a probation officer, the regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;~~

[ ~~3. 4. ] Any action that is humiliating, degrading, or abusive [ , including but not limited to any form of physical abuse, sexual abuse, or sexual harassment ];~~

[ ~~4. 5. ] Corporal punishment, which is administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort;~~

[ ~~5. 6. ] Subjection to unsanitary living conditions;~~

[ ~~6. 7. ] Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;~~

[ ~~7. 8. ] Denial of health care;~~

[ ~~8. 9. ] Denial of appropriate services and treatment;~~

[ ~~9. 10. ] Application of aversive stimuli, except as permitted pursuant to other applicable state regulations; aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual [ ~~but does not include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident~~ ];~~

[ ~~10. 11. ] Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;~~

[ ~~11. 12. ] Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;~~

[ ~~12. Involuntary use~~ 13. Use ] of pharmacological restraints [ ~~(administration of medication for the emergency control of an individual's behavior when the administration is not a standard treatment for the resident's medical or psychiatric condition);~~

~~13. Discrimination on the basis of race, religion, national origin, sex, or physical disability ];~~ and

14. Other constitutionally prohibited actions.

[ B. Employees shall be trained on the prohibited actions as provided in 6VAC35-101-190 (required initial training) and 6VAC35-101-200 (retraining); volunteers and interns shall be trained as provided in 6VAC35-101-300 (volunteer and intern orientation and training); and residents shall be oriented as provided in 6VAC35-101-800 (admission and orientation).

**6VAC35-101-655. Vulnerable population.**

A. The facility shall implement a procedure for assessing whether a resident is a member of a vulnerable population.

B. If the assessment determines a resident is a vulnerable population, the facility shall implement any identified additional precautions such as heightened need for supervision, additional safety precautions, or separation from certain other residents. The facility shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety and whether the placement would present management or security problems.

C. For the purposes of this section, vulnerable population means a resident or group of residents who have been assessed to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally (e.g., very young residents; residents who are small in stature; residents who have limited English proficiency; residents who are gay, lesbian, bi-sexual, transgender, or intersex; residents with a history of being bullied or of self-injurious behavior).

**6VAC35-101-660. Residents' mail.**

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section, as permitted by other applicable regulations, or by order of a court.

B. Staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate interests of the facility's order and security, nonlegal mail may be read, censored, or rejected in accordance with written procedures. The resident shall be notified when incoming or outgoing letters are withheld in part or in full.

C. In the presence of the recipient and in accordance with written procedures, staff may open to inspect for contraband, but shall not read, legal mail. Legal mail shall mean any written material that is sent to or received from a designated

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class of correspondents, as defined in procedures, which shall include any court, legal counsel, or administrators of the grievance system, the governing authority, the department, or the regulatory authority.

D. Staff shall not read mail addressed to parents, immediate family members, legal guardians, guardian ad litem, counsel, courts, officials of the committing authority, public officials, or grievance administrators unless permission has been obtained from a court or the facility administrator or his designee has determined that there is reasonable belief that the security of the facility is threatened. When so authorized, staff may read such mail in accordance with written procedures.

E. Except as otherwise provided [ ~~in this section~~ ], incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays.

F. If requested by the resident, postage and writing materials shall be provided for outgoing legal correspondence and at least two other letters per week.

G. First-class letters and packages received for residents who have been transferred or released shall be forwarded.

H. Written procedure governing correspondence of residents shall be made available to all staff and residents and shall be reviewed annually and updated as needed.

## **6VAC35-101-670. Telephone calls.**

Telephone calls shall be permitted in accordance with procedures that take into account the need for security and order, resident behavior, and program objectives.

## **6VAC35-101-680. Visitation.**

A. A resident's contacts and visits with family or legal guardians shall not be subject to unreasonable limitations [ ~~except~~, and any limitation shall be implemented only ] as permitted by written procedures, other applicable regulations, or by order of a court.

B. Residents shall be permitted reasonable visiting privileges, consistent with written procedures, that take into account (i) the need for security and order, (ii) the behavior of the residents and visitors, (iii) the importance of helping the resident maintain strong family and community ties, and (iv) whenever possible, flexible visiting hours.

C. Visitation procedures shall be provided upon request to the parent or legal guardian, as appropriate and applicable, and the residents.

## **6VAC35-101-690. Contact with attorneys, courts, and law enforcement.**

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as required by 6VAC35-101-660 (residents' mail), by telephone, or in person. Reasonable limits may be placed on such contacts as necessary to protect the security and order of the facility. For the purpose of this section a legal representative is defined as

[ (i) a court appointed or retained attorney or a paralegal, investigator, or other representative from that attorney's office [ or (ii) an attorney visiting for the purpose of a consultation if requested by the resident ].

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, although they may do so voluntarily.

1. Residents' consent shall be obtained prior to any contact with law enforcement.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

3. Each facility shall have procedures for establishing a resident's consent to any such contact and for documenting the resident's decision. The procedures may provide for (i) notification of the parent or legal guardian, as appropriate and applicable, prior to the commencement of questioning; and (ii) opportunity, at the resident's request, to confer with an attorney, parent or legal guardian, or other person in making the decision whether to consent to questioning.

## **6VAC35-101-700. Personal necessities.**

A. At admission, each resident shall be provided the following:

1. An adequate supply of personal necessities for hygiene and grooming;

2. Size appropriate clothing and shoes for indoor [ ~~or and~~ ] outdoor wear;

3. A separate bed equipped with a mattress, a pillow, blankets, bed linens, and, if needed, a waterproof mattress cover; and

4. Individual washcloths and towels.

B. At the time of issuance, all items shall be clean and in good repair.

C. Personal necessities shall be replenished as needed.

D. The washcloths, towels, and bed linens shall be cleaned or changed, at a minimum, once every seven days [ and more often, if needed ]. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of such linens and table linens.

E. After issuance, blankets shall be cleaned or changed as needed.

## **6VAC35-101-710. Showers.**

Residents shall have the opportunity to shower daily.

## **6VAC35-101-720. [ ~~Clothing.~~ (Reserved.)**

~~Provision shall be made for each resident to have an adequate supply of clean, size appropriate clothing and shoes for indoor or outdoor wear. ]~~

## **6VAC35-101-730. Residents' privacy.**

Residents shall be provided privacy from routine sight supervision by staff members of the opposite [ ~~gender~~ sex ]



while bathing, dressing, or conducting toileting activities, except when constant supervision is necessary to protect the resident due to mental health issues [ involving self-injurious behaviors or suicidal ideations or attempts ]. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

**6VAC35-101-740. Nutrition.**

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum [ applicable federal ] nutritional requirements [ ~~and the U.S. Dietary Guidelines~~ ].

B. Special diets or alternative dietary schedules, as applicable, shall be provided (i) when prescribed by a physician or (ii) when necessary to observe the established religious dietary practices of the resident. In such circumstances, the meals shall meet the minimum [ applicable federal ] nutritional requirements [ ~~of the U.S. Dietary Guidelines~~ ].

C. Menus of actual meals served shall be kept on file for at least six months.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day, except when the facility administrator approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.

F. Food shall be made available to residents who for documented medical or religious reasons need to eat breakfast before the 15 hours have expired.

**6VAC35-101-750. Reading materials.**

A. Reading materials that are appropriate to residents' ages and levels of competency shall be available to all residents.

B. Written procedure shall be developed and implemented governing resident access to publications.

**6VAC35-101-760. Religion.**

A. Residents shall not be required or coerced to participate in or unreasonably denied participation in religious activities.

B. Procedures on religious participation shall be available to residents.

**6VAC35-101-770. Recreation.**

A. The detention center shall have a written description of its recreation program that describes activities that are

consistent with the detention center's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;
2. Opportunity for large muscle exercise daily;
3. Scheduling so that activities do not conflict with meals, religious services, educational programs, or other regular events;
4. Provision of a variety of equipment for each indoor and outdoor recreation period; and
5. Regularly scheduled indoor and outdoor recreational activities. Outdoor recreation will be available whenever practicable in accordance with the facility's recreation program. Staff shall document any adverse weather conditions, threat to facility security, or other circumstances preventing outdoor recreation.

B. The recreational program shall (i) address the means by which residents will be medically assessed for any physical limitations or necessary restrictions on physical activities and (ii) provide for the supervision of and safeguards for residents, including when participating in water-related and swimming activities.

**6VAC35-101-780. Residents' funds.**

A. The facility shall develop and implement written procedures for safekeeping and for recordkeeping of any money that belongs to residents.

B. Residents' funds shall be used only (i) for their benefit; (ii) for payment of any fines, restitution, costs, or support ordered by a court; or (iii) to pay restitution for damaged property or personal injury as determined by [ the ] disciplinary process.

**6VAC35-101-790. Fundraising.**

Residents shall not be used in fundraising activities without the written permission of the legal guardian and the consent of residents.

Part VI  
Program Operation

Article 1  
Admission, Transfer, and Release

**6VAC35-101-800. Admission and orientation.**

A. Written procedure governing the admission and orientation of residents shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate and required by 6VAC35-101-800 (admission and orientation) and 6VAC35-101-810 (residents' personal possessions);
3. Health screening as required by 6VAC35-101-980 (health screening at admission);

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4. Mental health screening as required by 6VAC35-101-820 (mental health screening);

5. Notification of parent or legal guardian of admission [ , which shall include an inquiry regarding whether the resident has any immediate medical concerns or conditions ];

6. Provision to the parent or legal guardian of information on (i) visitation, (ii) how to request information, and (iii) how to register concerns and complaints with the facility;

7. Interview with resident to answer questions and obtain information; and

8. Explanation to resident of program services and schedules.

B. The resident shall receive an orientation to the following:

1. The behavior management program as required by 6VAC35-101-1070 (behavior management);

a. During the orientation, residents shall be given written information describing rules of conduct, the sanctions for rule violations, and the disciplinary process. These shall be explained to the resident and documented by the dated signature of resident and staff.

b. Where a language or literacy problem exists that can lead to a resident misunderstanding the rules of conduct and related regulations, staff or a qualified person under the supervision of staff shall assist the resident.

2. The grievance procedure as required by 6VAC35-101-100 (grievance procedure);

3. The disciplinary process as required by 6VAC35-101-1080 (disciplinary process); [ ~~and~~ ]

4. The resident's responsibilities in implementing the emergency procedures as required by 6VAC35-101-510 (emergency and evacuation procedures) [ ; and

5. The resident's rights, including but not limited to the prohibited actions provided for in 6VAC35-101-650 (prohibited actions) ].

C. Such orientation shall occur prior to assignment of the resident to a housing unit or room.

[ D. Staff performing admission and orientation requirements contained in this section shall be trained prior to performing such duties. ]

## **6VAC35-101-810. Residents' personal possessions.**

A. Residents' personal possessions shall be inventoried upon admission and such inventory shall be documented in the resident's case record. When a resident arrives at a facility with items not permitted in the detention center, staff shall:

1. Dispose of contraband items in accordance with written procedures; and

2. If the items are nonperishable property that the resident may otherwise legally possess, securely store the property and return it to the resident upon release.

B. Each detention center shall implement a written procedure regarding the disposition of personal property unclaimed by residents after release from the facility.

## **6VAC35-101-820. Mental health screening.**

A. Each resident shall undergo a mental health screening [ , ] as required by § 16.1-248.2 of the Code of Virginia [ , administered by trained staff, ] to ascertain the resident's suicide risk level and need for a mental health assessment. Such screening shall include the following:

1. A preliminary mental health screening, at the time of admission, consisting of a structured interview and observation as provided in facility procedures; and

2. The administration of an objective mental health screening instrument within 48 hours of admission.

B. If the mental health screening indicates that a mental health assessment is needed, it shall take place within 24 hours of such determination as required in § 16.1-248.2 of the Code of Virginia.

## **6VAC35-101-830. Classification plan.**

Residents shall be assigned to sleeping rooms and living units according to a written plan that takes into consideration detention center design, staffing levels, and the behavior and characteristics of individual residents.

## **6VAC35-101-840. Discharge.**

A. Residents shall be released only in accordance with written procedure.

B. Each resident's record shall contain a copy of the documentation authorizing the resident's discharge.

C. Residents shall be discharged only to the legal guardian or legally authorized representative.

D. As applicable and appropriate, information concerning current medications shall be provided to the legal guardian or legally authorized representative.

## Article 2

### Programs and Services

## **6VAC35-101-850. [ ~~Operational procedures. (Reserved.)~~ ]**

~~The current program or operating procedure manual shall be readily accessible to all staff. ]~~

## **6VAC35-101-860. Structured programming.**

A. Each facility shall implement a comprehensive, planned, and structured daily routine, including appropriate supervision, designed to:

1. Meet the residents' physical, emotional, and educational needs;

2. Provide protection, guidance, and supervision;

3. Ensure the delivery of program services; and

4. Meet the objectives of any individual service plan.

B. The structured daily routine shall be followed for all weekday and weekend programs and activities. Deviations from the schedule shall be documented.

**6VAC35-101-870. Written communication between staff; daily log.**

A. Procedures shall be implemented providing for the written means of communication between staff, such as the use of daily logs. This means of communication shall be maintained to inform staff of significant happenings or problems experienced by residents, such as any resident medical or dental complaints or injuries.

B. The date and time of the entry and the identity of the individual making each entry shall be recorded.

C. If the means of communication between staff is electronic, all entries shall post the date, time, and name of the person making an entry. The computer shall prevent previous entries from being overwritten.

Article 3  
Supervision

**6VAC35-101-880. Additional assignments of direct care staff.**

A. Direct care staff and staff responsible for the direct supervision of residents may assume the duties of nondirect care personnel only when these duties do not interfere with their direct care or direct supervision responsibilities.

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

**6VAC35-101-890. Staff supervision of residents.**

A. Staff shall provide 24-hour awake supervision seven days a week.

B. No member of the direct care staff shall be on duty and responsible for the direct care of residents for more than six consecutive days without a rest day, except in an emergency. For the purpose of this section, rest day shall mean a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the operation of a detention center. Such duties shall include participation in any training that is required by (i) this chapter, (ii) the employee's job duties, or (iii) the employee's supervisor.

C. Direct care staff shall have an average of at least two rest days per week in any four-week period.

D. Direct care staff shall not be on duty more than 16 consecutive hours except in an emergency.

E. When both males and females are housed in the same living unit at least one male and one female staff member shall be actively supervising at all times.

F. Staff shall always be in plain view of another staff person when entering an area occupied by residents of the opposite sex.

G. Staff shall regulate the movement of residents within the detention center in accordance with written procedures.

H. Written procedures shall be implemented governing the transportation of residents outside the detention center and from one jurisdiction to another.

**6VAC35-101-900. Staffing pattern.**

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, detention center sponsored activities.

B. During the hours that residents are scheduled to sleep there shall be no less than one direct care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping.

D. At all times, there shall be no less than one direct care staff member with current certifications in standard first aid and cardiopulmonary resuscitation on duty for every 16 residents, or portion thereof, being supervised by staff.

**6VAC35-101-910. Outside personnel working in the detention center.**

A. Detention center staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents in the detention center.

B. Adult inmates shall not work in the immediate presence of any resident and shall be monitored in a way that there shall be no direct contact between or interaction among adult inmates and residents.

Article 4  
Work Programs

**6VAC35-101-920. Work and employment.**

A. Assignment of chores, that are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. In both work assignments and employment the facility administrator or designee shall evaluate the appropriateness of the work and the fairness of the pay.

Part VII  
Health Care Services

**6VAC35-101-930. Health authority.**

The facility administrator shall designate a physician, nurse, nurse practitioner, government authority, health administrator, health care contractor, or health agency to serve as the facility's health authority responsible for organizing, planning, and monitoring the timely provision of appropriate health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services, consistent with applicable

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statutes and regulations, prevailing community standards, and medical ethics.

## **6VAC35-101-940. Provision of health care services.**

Treatment by nursing personnel shall be performed pursuant to the laws and regulations governing the practice of nursing within the Commonwealth. Other [ ~~health-trained~~ health trained ] personnel shall provide care within their level of training and certification.

## **6VAC35-101-950. Health care procedures.**

A. Written procedures shall be developed and implemented for:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;
2. Providing or arranging for the provision of on-going and follow-up medical and dental services after admission;
3. Providing or arranging for the provision of dental services for residents who present with acute dental concerns;
4. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian;
5. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and
6. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;
2. Name, address, and telephone number of a relative or other person to be notified; and
3. Information concerning:
  - a. Use of medication;
  - b. All allergies, including medication allergies;
  - c. Substance abuse and use; and
  - d. Significant past and present medical problems.

## **6VAC35-101-960. [ ~~Health-trained~~ Health trained ] personnel.**

A. [ ~~Health-trained~~ Health trained ] personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

B. The facility shall retain documentation of the training received by health trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

## **6VAC35-101-970. Consent to and refusal of health care services.**

A. Health care services, as defined in 6VAC35-101-10 (definitions), shall be provided in accordance with § 54.1-2969 of the Code of Virginia. The knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free choice (informed consent) to health care shall be obtained from the resident or parent or legal custodian, as required by law.

B. The resident and parent or legal guardian, as appropriate and applicable, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure and (ii) the alternatives to it.

C. Residents may refuse in writing medical treatment and care. Facilities shall have written procedures for:

1. Explaining the implications of refusals; and
2. Documenting the reason for the refusal.

This subsection does not apply to medication refusals that are governed by 6VAC35-101-1060 (medication).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

## **6VAC35-101-980. Health screening at admission.**

A. To prevent newly arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by health care personnel or [ ~~health-trained~~ health trained ] personnel, as defined in 6VAC35-101-10 (definitions), [ ~~using a health screening form that has been as~~ ] approved by the health authority.

B. Residents admitted who pose a health or safety threat to themselves or others shall be separated from the detention center's general population but provision shall be made for them to receive comparable services.

C. Immediate health care is provided to residents who need it.

## **6VAC35-101-990. Tuberculosis screening.**

A. Within five days of admission to the facility each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

B. A screening assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall [ ~~comply with current guidelines and~~ ] be performed in a manner consistent with any current [ ] recommendations of the Virginia Department of Health, Division of Tuberculosis Prevention and Control [ and the federal Department of Health and Human Services Centers for Disease Control and Prevention ]

for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

**6VAC35-101-1000. Residents' medical examination; responsibility for preexisting conditions.**

A. Within five days of admission, all residents who are not directly transferred from another detention center shall be medically examined by a physician or a qualified health care practitioner operating under the supervision of a physician to determine if the resident requires medical attention or poses a threat to the health of staff or other residents. A full medical examination is not required if there is documented evidence of a complete health examination within the previous 90 days; in such cases, a physician or qualified health care practitioner shall review the resident's health record and update as necessary.

B. A detention center shall not accept financial responsibility for preexisting medical, dental, psychological, or psychiatric conditions, except on an emergency basis.

**6VAC35-101-1010. Infectious or communicable diseases.**

A. A resident with a communicable disease shall not be housed in the general population unless a licensed physician certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

B. The facility shall implement written procedures approved by a medical professional that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;
2. Require staff training in standard precautions, initially and annually thereafter; and
3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

**6VAC35-101-1020. Suicide prevention.**

Written procedure shall provide for (i) a suicide prevention and intervention program developed in consultation with a qualified medical or mental health professional and (ii) all direct care staff to be trained and retrained in the implementation of the program.

**6VAC35-101-1030. Residents' health care records.**

A. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

~~[ B. The resident's active health records (i) shall be kept confidential and inaccessible from unauthorized persons, (ii)~~

~~shall be readily accessible in case of emergency, and (iii) shall be made available to authorized staff consistent with applicable state and federal statutes and regulations.~~

~~C. B. ] Each physical examination report shall include:~~

1. Information necessary to determine the health and immunization needs of the resident, including:
  - a. Immunizations administered at the time of the exam;
  - b. Vision exam;
  - c. Hearing exam;
  - d. General physical condition, including documentation of apparent freedom from communicable disease, including tuberculosis;
  - e. Allergies, chronic conditions, and handicaps, if any;
  - f. Nutritional requirements, including special diets, if any;
  - g. Restrictions on physical activities, if any; and
  - h. Recommendations for further treatment, immunizations, and other examinations indicated.
2. Date of the physical examination; and
3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

~~[ D. C. ] Each resident's health record shall include:~~

1. Notations of health and dental complaints and injuries and a summary of the residents symptoms and the treatment given; and
2. A copy of the information required in subsection B of 6VAC35-101-950 (health care procedures).

**6VAC35-101-1040. First aid kits.**

A. A ~~[ well-stocked well-stocked ]~~ first aid kit shall be maintained ~~[ , with and in accordance with an inventory of contents, ]~~ and readily accessible for dealing with minor injuries and medical emergencies.

B. First aid kits should be monitored in accordance with established facility procedures to ensure kits are maintained, stocked, and ready for use.

**6VAC35-101-1050. Hospitalization and other outside medical treatment of residents.**

A. When a resident needs hospital care or other medical treatment outside the detention center:

1. The resident shall be transported safely; and
2. A staff member or a law-enforcement officer, as appropriate, shall accompany the resident until appropriate security arrangements are made. This subdivision shall not apply to the transfer of residents under The Psychiatric Inpatient Treatment of Minors Act (§ 16.1-355 et seq. of the Code of Virginia).

B. In accordance with applicable laws and regulations, the parent or legal guardian, as appropriate and applicable, shall be informed that the resident was taken outside the facility for medical attention as soon as is practicable.

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## **6VAC35-101-1060. Medication.**

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, except (i) as required by 6VAC35-101-1250 (delivery of medication in postdispositional programs) or (ii) if otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall [ , in accordance with the provisions of § 54.1-3408 of the Code of Virginia, either (i) ] have successfully completed a medication training program approved by the Board of Nursing or [ (ii) ] be licensed by the Commonwealth of Virginia to administer medications before they can administer medication as stated in 6VAC35-101-190 (required initial training). Such staff members shall undergo an annual refresher training as stated in 6VAC35-101-200 (retraining).

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders issued by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the [ ~~standards of practice outlined in the current medication aide training curriculum approved by the Board of Nursing~~ requirements of § 54.2-2408 of the Code of Virginia and the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) ].

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed or most recently refilled;
2. Drug name;
3. Schedule for administration;
4. Strength;
5. Route;
6. Identity of the individual who administered the medication; and
7. Dates the medication was discontinued or changed.

H. In the event of a medication incident or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse,

or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. A medication incident shall mean an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication error does not include a resident's refusal of appropriately offered medication.

I. Written procedures shall provide for (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and making any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a health care professional. Documentation of this approval shall be retained.

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals which shall address:

1. Manner by which medication refusals are documented; and
2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

## Part VIII

### Behavior Management

## **6VAC35-101-1070. Behavior management.**

A. A behavior management program shall be implemented. Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations and the residents' and employees' safety and security.

B. Written procedures governing this program shall provide the following:

1. A listing of the rules of conduct and behavioral expectations for the resident;
2. Orientation of residents as required by 6VAC35-101-800 (admission and orientation);

3. The definition and listing of a system of privileges and sanctions that is used and available for use. Sanctions (i) shall be listed in the order of their relative degree of restrictiveness; (ii) may include a "cooling off" period where a resident is placed in a room for no more than 60 minutes; and (iii) shall contain alternatives to room confinement;

4. The specification of the staff members who may authorize the use of each privilege and sanction;

5. Documentation requirements when privileges are applied and sanctions are imposed;

6. The specification of the processes for implementing such procedures; and

7. Means of documenting and monitoring of the program's implementation including, but not limited to, an on-going administrative review of the implementation to ensure conformity with the procedures.

C. When substantive revisions are made to the behavior management program, written information concerning the revisions shall be provided to the residents [ , ] and direct care staff shall be oriented on the changes prior to implementation.

D. The facility administrator shall review the detention center's behavior intervention techniques and procedures at least annually to determine appropriateness for the population served.

### **6VAC35-101-1080. Disciplinary process.**

A. Procedures. Written procedures shall govern the disciplinary process that shall contain the following:

1. Graduated sanctions and progressive discipline;

2. Training on the disciplinary process and rules of conduct; and

3. Documentation on the administration of privileges and sanctions as provided in the behavior management program.

B. Disciplinary report. A disciplinary report shall be completed when it is alleged that a resident has violated a rule of conduct for which room confinement, including a bedtime earlier than that provided on the daily schedule, may be imposed as a sanction.

1. All disciplinary reports shall contain the following:

a. A description of the alleged rule violation, including the date, time, and location;

b. A listing of any staff present at the time of the alleged rule violation;

c. The signature of the resident and the staff who completed the report; and

d. The sanctions, if any, imposed.

2. A disciplinary report shall not be required when a resident is placed in his room for a "cooling off" period, in accordance with written procedures, that does not exceed 60 minutes.

C. Review of rule violation. A review of the disciplinary report shall be conducted by an impartial person. After the resident receives notification of the alleged rule violation, the resident shall be provided with the opportunity to admit or deny the charge.

1. The resident may admit the charge, in writing, and accept the sanction (i) prescribed for the offense or (ii) as amended by the impartial person.

2. The resident may deny the charge and the impartial person shall:

a. Meet in person with the resident;

b. Review the allegation with the resident;

c. Provide the resident with the opportunity to present evidence, including witnesses;

d. Provide, upon the request of the resident, for an impartial staff member to assist the resident in the conduct of the review;

e. Render a decision and inform the resident of the decision and rationale supporting this decision;

f. Complete the review within 12 hours of the time of the alleged rule violation, including weekends and holidays, unless the time frame ends during the resident's scheduled sleeping hours. In such circumstances, the delay shall be documented and the review shall be conducted within the same time frame thereafter;

g. Document the review, including any statement of the resident, evidence, witness testimony, the decision, and the rationale for the decision; and

h. Advise the resident of the right to appeal the decision.

D. Appeal. The resident shall have the right to appeal the decision of the impartial person.

1. The resident's claim shall be reviewed by the facility administrator or designee and shall be decided within 24 hours of the alleged rule violation, including weekends and holidays, unless the time frame ends during the resident's scheduled sleeping hours. In such circumstances, the delay shall be documented and the review shall be conducted within the same time frame thereafter. The review by the facility administrator may be conducted via electronic means.

2. The resident shall be notified in writing of the results immediately thereafter.

E. Report retention. If the resident is found guilty of the rule violation, a copy of the disciplinary report shall be placed in the case record. If a resident is found not guilty of the alleged rule violation, the disciplinary report shall be removed from the resident's case record and shall be maintained as required by 6VAC35-101-330 (maintenance of residents' records).

### **6VAC35-101-1090. Physical restraint.**

A. Physical restraint shall be used as a last resort only after less restrictive interventions have failed or to control residents

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whose behavior poses a risk to the safety of the resident, others, or the public.

1. Staff shall use the least force deemed reasonable to be necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with the intent to inflict injury.

2. Staff may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.

3. Physical restraint may be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint.

4. For the purpose of this section, physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.

B. Written procedures shall govern the use of physical restraint and shall include:

1. The staff position who will write the report and time frame;

2. The staff position who will review the report and time frame;

3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior; and

4. An administrative review of the use of physical restraints to ensure conformity with the procedures.

C. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date and time of the incident;

2. Staff involved;

3. Justification for the restraint;

4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;

5. Duration;

6. Description of method or methods of physical restraint techniques used;

7. Signature of the person completing the report and date; and

8. Reviewer's signature and date.

## **6VAC35-101-1100. Room confinement and isolation.**

A. Written procedures shall govern how and when residents may be confined to a locked room for both segregation and isolation purposes.

B. Whenever a resident is confined to a locked room, including but not limited to being placed in isolation, staff shall check the resident visually at least every 30 minutes and more often if indicated by the circumstances. Staff shall

conduct a check at least every 15 minutes in accordance with approved procedures when the resident is on suicide watch.

C. Residents who are confined to a room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise, outside of the locked room, every calendar day unless the resident's behavior or other circumstances justify an exception. The reasons for any such exception shall be documented.

D. If a resident is confined to his room for any reason for more than 24 hours, the facility administrator or designee shall be notified.

E. If the confinement extends to more than 72 hours, the (i) confinement and (ii) steps being taken or planned to resolve the situation shall be immediately reported to the director or designee. If this report is made verbally, it shall be followed immediately with a written, faxed, or secure email report in accordance with written procedures.

F. Room confinement, including isolation or administrative confinement, shall not exceed five consecutive days except when ordered by a medical provider.

G. When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.

H. The facility administrator or designee shall make personal contact with each resident who is confined to a locked room, including being placed in isolation, each day of confinement.

I. During isolation, the resident is not permitted to participate in activities with other residents and all activities are restricted, with the exception of (i) eating, (ii) sleeping, (iii) personal hygiene, (iv) reading, and (v) writing.

## **6VAC35-101-1110. Administrative confinement.**

A. Residents shall be placed in administrative confinement only by the facility administrator or designee [ , as a last resort for the safety of the residents ]. The reason for such placement shall be documented in the resident's case record.

B. Residents who are placed in administrative confinement shall be housed no more than two to a room. Single occupancy rooms shall be available when indicated for residents with severe medical disabilities, residents suffering from serious mental illness, sexual predators, residents who are likely to be exploited or victimized by others, and residents who have other special needs for single housing.

C. Residents who are placed in administrative confinement shall be afforded basic living conditions approximating those available to the facility's general population and, as provided for in approved procedures, shall be afforded privileges similar to those of the general population. Exceptions may be made in accordance with established procedures when justified by clear and substantiated evidence. If residents who are placed in administrative confinement are confined to a room or placed in isolation, the provisions of 6VAC35-101-1100 (room confinement and isolation) and 6VAC35-1140 (monitoring restrained residents) apply, as applicable.



D. Administrative confinement means the placement of a resident in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. For the purpose of this section, protective custody shall mean the separation of a resident from the general population for protection from or for other residents for reasons of health or safety.

**6VAC35-101-1120. Chemical agents.**

Staff are prohibited from using pepper spray and other chemical agents to manage resident behavior or maintain institutional security.

**6VAC35-101-1130. Mechanical restraints.**

A. Written procedure shall govern the use of mechanical restraints. Such procedures shall be approved by the department and shall specify:

1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and a mobile restraint chair may be used;
2. That the facility administrator or designee shall be notified immediately upon using restraints in an emergency situation;
3. That restraints shall never be applied as punishment or a sanction;
4. That residents shall not be restrained to a fixed object or restrained in an unnatural position;
5. That each use of mechanical restraints, except when used to transport a resident or during video court hearing proceedings, shall be recorded in the resident's case file or in a central log book; and
6. That a written record of routine and emergency distribution of restraint equipment be maintained.

B. Written procedure shall provide that (i) all staff who are authorized to use restraints shall receive training in such use, including how to check the resident's circulation and how to check for injuries and (ii) only trained staff shall use restraints.

**6VAC35-101-1140. Monitoring restrained residents.**

A. Written procedure shall provide that when a resident is placed in restraints, staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and
2. Make a direct personal check on the resident at least every 15 minutes and more often if the resident's behavior warrants [ , such checks shall include monitoring the resident's circulation in accordance with the procedure provided for in 6VAC35-101-1130 B ].

B. When a resident is placed in mechanical restraints for more than two hours cumulatively in a 24-hour period, with

the exception of use in routine transportation of residents, staff shall immediately consult with a [ health care provider and a ] mental health professional. This consultation shall be documented.

C. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, (i) staff shall immediately consult with and document that they have consulted with a mental health professional and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate. Any such protocols shall be in compliance with the procedures required by 6VAC35-101-1150 (restraints for medical and mental health purposes).

**6VAC35-101-1150. Restraints for medical and mental health purposes.**

Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure shall identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.

Part IX

Postdispositional Detention Programs

**6VAC35-101-1160. Approval of postdispositional detention programs.**

A detention center that accepts placements in a postdispositional detention program, as defined herein, must be approved by the board to operate a postdispositional detention program. The certificate issued by the board shall state that the detention center is approved to operate a postdispositional detention program and the maximum number of residents that may be included in the postdispositional detention program. The board will base its approval of the postdispositional detention program on the program's compliance with provisions of 6VAC35-101-1160 (approval of postdispositional detention programs) through 6VAC35-101-1270 (release from a postdispositional detention program).

**6VAC35-101-1170. Agreement with court service unit.**

The postdispositional detention program shall request a written agreement with the court service unit of the committing court defining working relationships and responsibilities in the implementation and utilization of the postdispositional detention program.

**6VAC35-101-1180. Placements in postdispositional detention programs.**

A. A detention center that accepts placements in a postdispositional detention program shall have written procedure ensuring reasonable utilization of the detention center for both predispositional detention and the postdispositional detention program. This procedure shall provide for a process to ensure that the postdispositional detention program does not cause the detention center to exceed its rated capacity.

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B. When a court orders a resident detained in a postdispositional detention program, the detention center shall:

1. Obtain from the court service unit a copy of the court order, the resident's most recent social history, and any other written information considered by the court during the sentencing hearing; and
2. Develop a written plan with the court service unit within five business days to enable such residents to take part in one or more locally available treatment programs appropriate for their rehabilitation that may be provided in the community or at the detention center.

C. When a detention center accepts placements in a postdispositional detention program, the detention center shall:

1. Provide programs or services for the residents in the postdispositional detention program that are not routinely available to predispositionally detained residents. This requirement shall not prohibit residents in the postdispositional detention program from participating in predispositional services or any other available programs; and
2. Establish a schedule clearly identifying the times and locations of programs and services available to residents in the postdispositional detention program.

D. Upon the receipt of (i) a referral of the probation officer of a potential resident who meets the prerequisite criteria for placement provided in § 16.1-284.1 of the Code of Virginia or (ii) an order of the court, the detention center shall conduct the statutorily required assessment as to whether a resident is an appropriate candidate for placement in a postdispositional detention program. The assessment shall assess the resident's need for services using a process that is outlined in writing, approved by the department, and agreed to by both the facility administrator and the director of the court service unit. Based on these identified needs, the assessment shall indicate the appropriateness of the postdispositional detention program for the resident's rehabilitation.

E. When programs or services are not available in the detention center, a resident in a postdispositional detention program may be considered for temporary release from the detention center to access such programs or services in the community.

1. Prior to any such temporary release, both the detention center and the court service unit shall agree in writing as to the suitability of the resident to be temporarily released for this purpose.
2. Residents who present a significant risk to themselves or others shall not be considered suitable candidates for participation in programs or services outside the detention center or for paid employment outside the detention center. Such residents may participate in programs or services

within the detention center, as applicable, appropriate, and available.

## **6VAC35-101-1190. Program description.**

The postdispositional detention program shall have a written statement of its:

1. Purpose and philosophy;
2. Treatment objectives;
3. Criteria and requirements for accepting residents;
4. Criteria for measuring a resident's progress;
5. General rules of conduct and the behavior management program, with specific expectations for behavior and appropriate sanctions;
6. Criteria and procedures for terminating services, including terminations prior to the resident's successful completion of the program;
7. Methods and criteria for evaluating program effectiveness; and
8. Provisions for appropriate custody, supervision, and security when programs or services are delivered outside the detention center.

## **6VAC35-101-1200. Individual service plans in postdispositional detention programs.**

A. A written plan of action, the individual service plan, shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter. The individual service plan shall:

1. Be revised as necessary and reviewed at intervals; and
2. Specify (i) measurable short-term and long-term goals; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;
2. Resident's current level of functioning;
3. Goals, objectives, and strategies established for the resident;
4. Projected family involvement; and
5. Projected date for accomplishing each objective.

C. Each service plan shall include the date it was developed and the signature of the person who developed it.

D. The resident and facility staff shall participate in the development of the individual service plan.

E. The (i) supervising agency and (ii) resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

F. The initial individual service plan shall be distributed to the resident, the resident's parents or legal guardian as appropriate and applicable, and the applicable court service unit.

G. Staff responsible for daily implementation of the resident's individual service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

**6VAC35-101-1210. Progress reports in postdispositional detention programs.**

A. There shall be a documented review of each resident's progress in accordance with § 16.1-284.1 of the Code of Virginia. The review shall report the:

1. Resident's progress toward meeting the plan's objectives;
2. Family's involvement; and
3. Continuing needs of the resident.

B. Each progress report shall include (i) the date it was developed and (ii) the signature of the person who developed it.

**6VAC35-101-1220. Case management services in postdispositional detention programs.**

A. The facility shall implement written procedures governing case management services that shall address:

1. [~~The resident's adjustment to the facility, group living, and separation from the resident's family~~ Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living ];
2. [~~Supportive counseling, as needed~~ Assisting the resident and the family to maintain their relationships and prepare for the resident's future care ];
3. [~~Transition and community reintegration planning and preparation; and~~ Utilizing appropriate community resources to provide services and maintain contacts with such resources; ]
4. [~~Communicating with (i) staff at the facility, (ii) the parents or legal guardians, as appropriate and applicable, (iii) the court service unit, and (iv) community resources, as needed~~ Helping the resident strengthen his capacity to function productively in interpersonal relationships;
5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and
6. Working with the resident, the family, or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care ];

B. The provision of case management services shall be documented in the case record.

**6VAC35-101-1230. Residents' health care records in postdispositional detention programs.**

A. In addition to the requirements of 6VAC35-101-1030 (residents' health care records), each resident's health record shall include or document all efforts to obtain treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

B. In addition to the information required by 6VAC35-101-950 (health care procedures), the following information shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Medical insurance company name and policy number or Medicaid number; and
2. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

**6VAC35-101-1240. Services by licensed professionals in postdispositional detention programs.**

When a postdispositional detention program refers a resident to a licensed professional in private practice, the program shall check with the appropriate licensing authority's Internet web page or by other appropriate means to verify that the individual is appropriately licensed.

**6VAC35-101-1250. Delivery of medication in postdispositional detention programs.**

A detention center that accepts postdispositional placements exceeding 30 consecutive days pursuant to § 16.1-284 of the Code of Virginia shall have and follow written procedures, approved by its health authority, that either permits or prohibits self-medication by postdispositional residents. The procedures may distinguish between residents who receive postdispositional services entirely within the confines of the detention center and those who receive any postdispositional services outside the detention center. The procedures shall conform to the specific requirements of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

**6VAC35-101-1260. Residents' paid employment in postdispositional detention programs.**

A. Paid employment may be part of the rehabilitation and treatment plan for a postdispositional resident. Such work must be in a setting that the facility administrator has determined to be appropriate.

B. Paid employment for any resident participating in a postdispositional detention program must be in accordance with 6VAC35-101-920 (work and employment).

**6VAC35-101-1270. Release from a postdispositional detention program.**

In addition to the requirements in 6VAC35-101-840 (discharge), information concerning the resident's need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized

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representative, as appropriate, at the time of the resident's discharge from the facility.

[ [FORMS \(6VAC35-101\)](#)

[Health Services Intake Medical Screening, HS 1/10.](#) ]

DOCUMENTS INCORPORATED BY REFERENCE  
(6VAC35-101)

[ [Screening for TB Infection and Disease, Policy TB 99-001 \(www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Policies/screening.htm\)](#), ~~Virginia Department of Health.~~

[Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC, Morbidity and Mortality Weekly Report, July 7, 2006, Vol. 55, No. RR-9](#)

<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5509a1.htm>), ~~Department of Health and Human Services, Centers for Disease Control and Prevention.~~

[A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act, Developed by the Virginia Department of Social Services, Approved as Revised by the Board of Nursing, July 1996, September 2000.](#)

[Guidelines for Transporting Juveniles in Detention, revised September 8, 2004, Virginia Department of Juvenile Justice](#)

[Compliance Manual - Juvenile Secure Detention Centers, effective January 1, 2014, Virginia Department of Juvenile Justice](#) ]

VA.R. Doc. No. R09-1816; Filed July 18, 2013, 4:47 p.m.



## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the following regulation have been filed by the Virginia Waste Management Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. 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.

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

**Contact Information:** Melissa Porterfield, Policy and Planning Specialist, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4238 or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).

FORMS (9VAC20-90)

[Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 \(rev. 11/12\)](#)

[Statement of Economic Benefits and Instructions for Completing Form DEQ 50-25 \(rev. 12/12\)](#)

~~[Solid Waste Annual Fee Quarter Payment Form PF001 \(rev. 8/12\).](#)~~

[Solid Waste Annual Permit Fee Quarter Payment, Form PF001 \(rev. 7/13\)](#)

VA.R. Doc. No. R13-3809; Filed July 17, 2013, 11:07 a.m.

## STATE WATER CONTROL BOARD

### Proposed Regulation

**Title of Regulation:** **9VAC25-91. Facility and Aboveground Storage Tank (AST) Regulation (amending 9VAC25-91-10 through 9VAC25-91-70, 9VAC25-91-100, 9VAC25-91-120 through 9VAC25-91-180, 9VAC25-91-200, 9VAC25-91-220; adding 9VAC25-91-145; repealing 9VAC25-91-90).**

**Statutory Authority:** §§ 62.1-44.15, 62.1-44.34:15, 62.1-44.34:15.1, and 62.1-44.34:19.1 of the Code of Virginia.

**Public Hearing Information:**

September 9, 2013 - 2 pm - Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA

September 20, 2013 - 10:30 am - Department of Environmental Quality, 629 East Main Street, Richmond, VA

**Public Comment Deadline:** October 11, 2013.

**Agency Contact:** Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).

**Basis:** Section 62.1-44.34:15.1 of the Code of Virginia directs the State Water Control Board to adopt regulations concerning aboveground storage tanks (ASTs). The statute specifically directs the board to adopt regulations with different regulatory requirements based on the aggregate capacity of the tanks.

Section 62.1-44.34:19.1 of the Code of Virginia requires the board to develop an inventory of facilities with an aboveground storage capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil and develop regulations concerning the registration of these tanks.

Section 62.1-44.34:15 of the Code of Virginia requires facilities to provide an Oil Discharge Contingency Plan, which detail actions that will be taken by the operator in the event an oil spill occurs, to the Department of Environmental Quality (DEQ) for approval.

There is no direct mandate for aboveground storage tank regulations in federal law; however, federal regulations such as 40 CFR Part 112 (Oil Pollution Prevention), and 29 CFR 1910.106 (Occupational Safety and Health Regulations) as well as industry standards, such as API 653 and API 570, contain a number of requirements related to AST construction and operation. Many of those federal requirements are similar in their purpose and effect to the requirements envisioned by the state's Pollution Prevention Law and Oil Discharge Contingency Plan. Every attempt has been made to make the requirements of the state's aboveground storage tank regulations consistent with requirements already contained in those federal regulations and industry standards.

**Purpose:** The amendments incorporate new performance standards for certain aboveground storage tanks located in the City of Fairfax as mandated by Chapter 884 of the 2011 Acts of Assembly, which requires certain aboveground storage tanks located in the City of Fairfax to meet new performance standards by July 1, 2021. Other amendments align Virginia's regulatory requirements with federal requirements and current industry standards. Updating these regulations to be consistent with current federal requirements and current industry standards will require the most current and protective standards to be met in Virginia and will be more protective of the health, safety, and welfare of citizens.

**Substance:** The amendments add 9VAC25-91-145 providing performance standards for aboveground storage tanks located in the City of Fairfax to address requirements for ASTs located in the City of Fairfax. These standards are required by state law to be met by July 1, 2021. Aboveground storage tanks with an aggregate capacity of one million gallons or more that are located in the City of Fairfax and were in existence prior to January 29, 1992, are required to meet the new performance standards. 9VAC25-91-145 addresses the requirements for strength testing of tanks and for release prevention barriers and requires upgraded tanks to meet applicable standards of the Uniform Statewide Building Code.

The regulations are also being revised to remove the requirement for registration fees to be paid. Registration fees range from \$25 to \$100 per operator. Fees are being retained for the review of Oil Discharge Contingency Plans (ODCP), which range from \$718 to \$3,353. Removing the requirement for registration fees to be paid allows for program staff to dedicate more time on activities such as facility inspections and reviewing contingency plans instead of registration fee issues.

Since many years have passed since the regulations were last amended, the agency is revising the regulations to address common questions the agency receives concerning these regulations. For example, the agency often receives questions concerning the applicability of the regulations. The agency is proposing to revise the regulations to clarify how the aggregate storage capacity of a facility is calculated and to

reorganize the regulatory section that discusses the pollution prevention standards that facilities must comply with to remove duplicative requirements in the regulations and to make the pollution prevention requirement section more concise and easier to understand.

Amendments also include the most recent industry standards in the regulations; industry standards are continuously reviewed and updated as technology advances, and depending upon the size and type of the aboveground storage tank, different industry standards apply to the maintenance and inspection of the tanks. The regulations now reference the most recent industry standards.

**Issues:** The public will benefit from the revisions being made to the regulations. The regulations will now include the most recent industry standards, which will make the regulations consistent with current industry practices. Making the regulations consistent with current industry practices will make it easier for the regulated community to comply with Virginia's regulations. The amendments also make it easier for the Commonwealth to oversee the regulatory program since there will no longer be a difference between regulatory requirements and current industry practices. Additionally, the amendments include current industry practices for both site built tanks (large tanks) and shop built tanks (smaller tanks).

The amendments remove the requirement for registration fees to be paid when facilities register aboveground storage tanks. Removing this requirement will benefit both the regulated community and the agency. The agency will be able to devote resources previously used to track payments of registration fees (\$25-\$100) to verifying the ASTs are operated and maintained in a manner that is protective of human health and the environment.

This regulatory amendment will assist facilities located in the City of Fairfax that are required to have their ASTs meet performance standards by July 1, 2021, by providing these facilities with certainty concerning the standards they will be required to meet. These facilities need time to arrange for tanks to be emptied, upgraded, and retested before being brought back into service. Due to the nature of the terminal in Fairfax, the four facilities at the terminal will need to coordinate the upgrading of tanks to ensure that capacity is available to handle pipeline deliveries and to prevent the disruption of petroleum deliveries to consumers.

The regulatory action poses no disadvantages to the public or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 884 of the 2011 Acts of Assembly, the State Water Control Board (Board) proposes to incorporate new performance standards for aboveground oil storage tanks (ASTs) at facilities with an aggregate capacity of one million gallons or greater existing prior to January 29, 1992, and located in the City of Fairfax. Additionally, the Board

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proposes to: 1) eliminate registration fees, 2) introduce additional flexibility concerning daily and weekly inspections, and 3) include additional variances by regulation.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. As required by Chapter 884 of the 2011 Acts of Assembly, the Board proposes that ASTs at facilities with an aggregate capacity of one million gallons or greater existing prior to January 29, 1992, and located in the City of Fairfax be required to meet certain performance standards by July 1, 2021. There are four facilities located in the City of Fairfax that are subject to these requirements. There are approximately 56 tanks at these facilities; however some tanks have previously been upgraded and some are not required to be upgraded. The Department of Environmental Quality estimates that there are 17 tanks that may need to be upgraded as a result to changes in state law that have been incorporated into this regulatory amendment. One industry representative estimated that the cost to upgrade an AST (2,100,000 - 3,360,000 gallons) is \$600,000. Meeting the performance standards will reduce the likelihood of leaks harming the environment and public health.

Other Board proposals would reduce costs to most of the regulated community. The Board proposes to eliminate registration fees which can range from \$25 to \$100. Here are the current required registration fees:

- a. An individual AST (new, existing, replaced or brought back into use after permanent closure) = \$25;
- b. One facility with one AST = \$25;
- c. One facility with two or more ASTs = \$50;
- d. Two facilities with one AST at each facility = \$50;
- e. Two facilities with one AST at the first facility and two or more at the other = \$75;
- f. Two or more facilities with two or more ASTs each = \$100;
- g. Three facilities with one AST each = \$75; or
- h. Three facilities with two or more ASTs at the first facility and one AST at each other facility = \$100.

According to the Department, the revenue from the registration fees does not cover the administrative cost of collection. Thus eliminating fees creates a net benefit for the Commonwealth since costs are reduced for the regulated community and net resources for the Department to protect the environment and public health are not reduced.

The Board also proposes introducing additional flexibility concerning daily and weekly inspections. Inspections would be required to be conducted at a minimum every 14 days, instead of daily or weekly when normal operations are not occurring. This will reduce compliance costs to the regulated community associated with conducting these inspections.

Since this would not likely significantly increase risk to the environment and public health, this proposed amendment would also likely produce a net benefit.

Additionally, the Board proposes to include additional variances by regulation that would extend the time between inspections if certain criteria are met. This would reduce the number of inspections that are required to be conducted and would also allow the regulated community more regulatory flexibility without having to petition the board for a variance. The regulated community would not have to pay costs associated with preparing a variance petition; and the Department does not believe that it would increase the probability that activity would occur that the Board would not have approved. Thus the proposal to include additional variances by regulation would also likely produce a net benefit.

Businesses and Entities Affected. The proposed amendments potentially affect owners of aboveground oil storage tanks with capacities of 660 gallons of oil or greater and the public who live within the watershed potentially contaminated by leaks. Both localities and businesses are examples of potential entities that own aboveground storage tanks with capacities of greater than 660 gallons of oil. At the end of FY2011, there were 10,670 active registered ASTs in Virginia. These ASTs were located at 3,654 facilities within the state.

Localities Particularly Affected. The proposal to incorporate new performance standards for certain aboveground storage tanks located in the City of Fairfax particularly affects the City of Fairfax, of course. The other proposed amendments apply statewide.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposal that the facilities located in the City of Fairfax meet the specified performance standards, as required by statute, will significantly increase costs for the relevant private firms, consequently negatively affecting their value. The proposals to eliminate registration fees, introduce additional flexibility concerning daily and weekly inspections, and include additional variances by regulation all reduce costs for private firms and hence have a positive impact on their value.

Small Businesses: Costs and Other Effects. The proposals to eliminate registration fees, introduce additional flexibility concerning daily and weekly inspections, and include additional variances by regulation all reduce costs for small firms with ASTs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly 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 Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

*The amendments (i) incorporate new performance standards for certain aboveground storage tanks located in the City of Fairfax as mandated by Chapter 884 of the 2011 Acts of Assembly; (ii) clarify the applicability of the regulations; (iii) remove the requirement for the payment of registration fees; (iv) reorganize 9VAC25-91-130 to make the pollution prevention regulations easier to understand; and (v) update the citations to include the most recent industry standards and technology.*

Part I  
Program Administration

**9VAC25-91-10. Definitions.**

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Corrosion professional" means a person who by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the Department of Environmental Quality (DEQ).

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Elevated tank" means an AST that is not in contact with the ground and that is raised above the surface of the ground.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil and includes a pipeline.

"Flow-through process tank" means (as defined in 40 CFR Part 280) a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Local building official" means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code (USBC).

"Local director or coordinator of emergency services" means any person appointed pursuant to § 44-146.19 of the Code of Virginia.

"Major repair" means alterations that refer to operations that require cutting, additions, removal or replacement of the annular plate ring, the shell-to-bottom weld or a sizable portion of the AST shell.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

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"Person" means an individual; trust; firm; joint stock company; corporation, including a government corporation; partnership; association; any state or agency thereof; municipality; county; town; commission; political subdivision of a state; any interstate body; consortium; joint venture; commercial entity; the government of the United States or any unit or agency thereof.

"Pipes" or "piping" means a pressure-tight cylinder used to convey a fluid or to transmit a fluid pressure and is ordinarily designated "pipe" in applicable material specifications. Materials designated "tube" or "tubing" in the specifications are treated as pipe when intended for pressure service. This term includes piping and associated piping which is utilized in the operation of an AST, or emanating from or feeding ASTs or transfers oil from or to an AST (e.g., dispensing systems, including airport hydrant fueling systems, supply systems, gauging systems, auxiliary systems, etc.). This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe; pumping units; fabricated assemblies associated with pumping units; metering and delivery stations and fabricated assemblies therein; and breakout tanks.

"Release prevention barrier (RPB)" means a nonearthen barrier that is impermeable; is composed of material compatible with oil stored in the AST; meets proper engineering strength and elasticity standards; and functions to prevent the discharge of stored oil to state lands, waters and storm drains. It must contain and channel any leaked oil in a manner that provides for early release detection through the required daily and weekly inspections.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with this chapter has no storage capacity.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Tank vessel" means any vessel used in the transportation of oil as bulk cargo.

"Upgrade" means an alteration of the performance, design, equipment or appurtenances of an AST or facility to meet a higher, new, or current standard.

"Vaulted tank" means any tank situated upon or above the surface of the floor in an underground area (such as an underground room, basement, cellar, mine-working, drift, shaft, tunnel or vault) providing enough space for physical inspection of the exterior of the tank.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

## **9VAC25-91-20. Applicability.**

A. The operator shall comply with all applicable requirements pursuant to this chapter. The operator as defined in this chapter can be more than one person and each operator shares joint responsibility for compliance.

B. The requirements of this chapter ~~may vary in their applicability to any given AST or facility depending on the part in which the requirement appears. The applicability of Parts II, III, IV, and V are differentiated~~ apply as follows:

1. The provisions of Part II (9VAC25-91-100 et seq., Registration, Notification and Closure Requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity greater than 660 gallons of oil, unless otherwise specified within this chapter; and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity greater than 1,320 gallons of oil, unless otherwise specified within this chapter. Storage of oil that is excluded from regulation in 9VAC25-91-30 A is not included when calculating the aggregate aboveground storage capacity.
2. The provisions of Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter; and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter. Storage of oil that is excluded from regulation in 9VAC25-91-30 A is not included when calculating the aggregate aboveground storage capacity.
3. The provisions of Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity of 25,000 gallons or greater of oil, unless



otherwise specified within this chapter; and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter. Storage of oil that is excluded from regulation in 9VAC25-91-30 A is not included when calculating the aggregate aboveground storage capacity.

4. The provisions of Part V (9VAC25-91-180 et seq., Groundwater Characterization Study (GCS) and GCS Well Monitoring Requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity of one million gallons or greater of oil, unless otherwise specified within this regulation; and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity of one million gallons or greater of oil, unless otherwise specified within this chapter. Storage of oil that is excluded from regulation in 9VAC25-91-30 A is not included when calculating the aggregate aboveground storage capacity.

**9VAC25-91-30. Exclusions.**

A. The requirements of this chapter do not apply to:

1. Vessels;
2. Licensed motor vehicles, unless used solely for the storage of oil;
3. An AST with a storage capacity of 660 gallons or less of oil;
4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9601 et seq.);
5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the federal Clean Water Act (33 USC § 1251 et seq.);
6. An AST that is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia;
7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug, and Cosmetic Act (21 USC § 301 et seq.);
8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC § 6901 et seq.), or a mixture of such hazardous wastes and other regulated substances;
9. An AST that is used to store propane gas, butane gas or other liquid petroleum gases;

10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;
11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;
12. A surface impoundment, pit, pond, or lagoon;
13. A stormwater or wastewater collection system;
14. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;

15. An AST that forms an integral part (cannot be readily detached or removed) of the equipment or machinery and the contents of the AST are solely used by the attached equipment or machinery (e.g., fuel tank affixed into the frame of an emergency generator):

- ~~15.~~ 16. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and cleanup of oil; (ii) used by a federal, state or local entity in responding to an ~~emergency~~; emergency, including response related drills; or (iii) used temporarily on-site to replace permanent capacity storage;
- ~~16.~~ 17. Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors;
- ~~17.~~ 18. A flow-through process tank;
- ~~18.~~ 19. Oily water separators;
- ~~19.~~ 20. An AST containing dredge spoils;
- ~~20.~~ 21. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with ~~an aggregate~~ a storage capacity of 1,100 gallons or less; or
- ~~21.~~ 22. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment.

B. In addition to the ~~complete~~ exclusions listed in subsection A of this section, the following are ~~partially~~ excluded from ~~this chapter in that they need not comply with~~ the requirements contained in Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter:

1. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored;
2. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute); and
3. Line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

C. ~~In addition to the exclusions listed in subsections A and B of this section, asphalt~~ Asphalt and asphalt compounds ~~which~~ that are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute) are

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excluded for the purposes of ~~from~~ any requirement to install groundwater monitoring wells or groundwater protection devices or to conduct groundwater characterization studies under Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) and Part V (9VAC25-91-180 et seq., Groundwater Characterization Study (GCS) and GCS Well Monitoring Requirements) of this chapter.

## **9VAC25-91-40. Compliance dates.**

A. Every operator shall comply with this chapter on its effective date unless a later date is otherwise specified.

B. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., facilities not engaged in the resale of oil) having an aboveground storage capacity of 25,000 gallons or greater of oil ~~shall comply~~ must have complied with Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter ~~within 120 days after the effective date of this chapter on or before October 22, 1998,~~ unless otherwise specified in this chapter. If compliance with Part III of this chapter necessitates extensive upgrades to the existing facility design, these exempted operators ~~may submit~~ shall have submitted a proposed extended compliance schedule and supporting explanation to the board no later than ~~90 days after the effective date of this chapter.~~ The board may approve an extended compliance schedule where the circumstances so warrant September 22, 1998, or such date approved by the board.

C. Operators of ~~existing~~ ASTs and facilities existing prior to June 24, 1998, and previously registered in accordance with the requirements of § 62.1-44.34:19.1 of the Code of Virginia shall not have to resubmit the registration form until five years from the date of the initial registration unless title to that AST or facility is transferred (i.e., change of ownership) or the AST is converted or brought back into use after permanent closure, whichever occurs first.

D. Operators of facilities subject to Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter that ~~are were~~ brought into use on or after the effective date of this chapter June 24, 1998, shall submit a complete application meeting all applicable requirements of this chapter no later than 90 days prior to commencement of operations.

1. The operator must receive approval of the ODCP by ~~DEQ~~ the board prior to commencement of facility operations.

2. The operators of facilities that have previously met the provisions of § 62.1-44.34:15 of the Code of Virginia for ODCP submittal shall not be required to resubmit the ODCP until 90 days prior to the date that plan's approval expires. Ninety days prior to the expiration of approval of the ODCP, the facility operator shall submit an updated plan or certification of renewal of an existing plan according to 9VAC25-91-170 F.

E. ~~As of July 1, 1997,~~ An operator having obtained approval of the ODCP shall operate, maintain, monitor, and keep records pertaining to 9VAC25-91-170 A 18 of Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter and under the provisions of Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter.

## **9VAC25-91-50. Statement of purpose.**

The purpose of this chapter is to: (i) establish requirements for registration of facilities and individual ASTs located within the Commonwealth; (ii) provide the board with the information necessary to identify and inventory facilities with an aggregate storage capacity of greater than 1,320 gallons of oil or an individual ASTs AST with a storage capacity of greater than 660 gallons of oil; (iii) develop standards and procedures for operators of facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil relating to the prevention of pollution from new and existing aboveground storage tanks; (iv) provide requirements for the development of facility oil discharge contingency plans for facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil that will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time, where plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety; and (v) provide requirements for facilities and individual ASTs with an aggregate aboveground storage capacity of one million gallons or greater of oil to conduct a groundwater characterization study (GCS) within the geographic boundaries of a facility; to submit the GCS as part of the oil discharge contingency plan; to conduct a monthly gauging and inspection of GCS monitoring wells, monitoring of well headspace and sampling and laboratory analysis of GCS monitoring wells; and to gather all observations and data maintained at the facility and compile and submit them as an annual report to the ~~board~~ department.

## **9VAC25-91-60. Administrative fees.**

A. Fees are assessed for review of oil discharge contingency plans ~~and for registration of an AST or a facility according to the schedules contained in subsections B and C of this section.~~ A registration form or an (ODCP). An application for review of a contingency plan will not be accepted unless the required fee has been received by the department.

1. Fees shall be paid in United States currency by check, draft, or postal money order made payable to the Treasurer of Virginia. When the department is able to accept electronic payments, payments may be submitted electronically.

2. The fee, together with the ~~form or~~ application and oil discharge contingency plan, shall be sent to the department at the following mailing address:

Department of Environmental Quality  
 Office of Financial Management  
 P.O. Box 40150 1104  
 Richmond, VA 23240 23218

3. Notifications and correspondence for which a fee is not applicable should be mailed to the department as specified in 9VAC25-91-70.

**B. Facility and AST registration.**

~~1. Registration fees shall be submitted for the following:~~

- ~~a. Initial registration;~~
- ~~b. New installations;~~
- ~~c. Conversion (i.e., UST to an AST, storing a nonoil to an oil product, etc.);~~
- ~~d. AST brought back into use after permanent closure;~~
- ~~e. Registration renewal (every five years); or~~
- ~~f. When title to a facility or AST is transferred (change of ownership).~~

~~2. Registration fees are as follows:~~

- ~~a. An individual AST (new, existing, replaced or brought back into use after permanent closure) = \$25;~~
- ~~b. One facility with one AST = \$25;~~
- ~~c. One facility with two or more ASTs = \$50;~~
- ~~d. Two facilities with one AST at each facility = \$50;~~
- ~~e. Two facilities with one AST at the first facility and two or more at the other = \$75;~~
- ~~f. Two or more facilities with two or more ASTs each = \$100;~~
- ~~g. Three facilities with one AST each = \$75; or~~
- ~~h. Three facilities with two or more ASTs at the first facility and one AST at each other facility = \$100.~~

~~3. An operator of an AST subject to the registration requirements of this chapter shall submit a fee of \$25 to the board for each such AST up to a maximum of \$50 per facility. An operator of a single facility shall submit a maximum of \$50 for the facility and all ASTs. An operator of multiple facilities shall submit a maximum fee of \$100 to the board to register all of their facilities and ASTs.~~

~~4. Registration forms will not be accepted by the board as complete unless the applicable fee has been paid. No fee is required for a "notification" of an AST replacement (i.e., relocation of existing AST), upgrade, repair, or closure.~~

**C. B. ODCP application.**

1. ODCP application fees are as follows:

- a. For a facility with an aggregate aboveground maximum storage or handling capacity from 25,000 gallons up to and including 100,000 gallons of oil the fee is \$718;

b. For a facility with an aggregate aboveground maximum storage or handling capacity ~~from 100,001~~ greater than 100,000 gallons up to one million gallons of oil the fee is \$2,155;

c. For a facility with an aggregate aboveground maximum storage or handling capacity of one million gallons or greater of oil the fee is \$3,353; or

d. For a pipeline, the ODCP application fee shall be based on the average daily throughput of oil. Once that volume is determined, the ODCP application fee will be calculated per subdivisions a, b and c of this subdivision.

2. The fee for approval of a contingency plan encompassing more than one facility as described in 9VAC25-91-170 D shall be based on the aggregate aboveground storage capacity of the facilities.

3. Fees shall only be paid upon initial submittal of an oil discharge contingency plan by an operator. Renewals, additions, deletions or changes to the plan are not subject to the administrative fee.

4. Application fees are refundable upon receipt of a written request to withdraw the ODCP application provided the request is received no later than 30 days after submittal and prior to the department's review of the contingency plan.

5. Overpayments of application fees are refundable upon written request.

**9VAC25-91-70. Notices Correspondence to the Department of Environmental Quality (DEQ).**

A. Correspondence that contains fees must be submitted to the department as specified in 9VAC25-91-60 A.

B. All other written correspondence and notifications to the Department of Environmental Quality department related to the requirements of this chapter, with the exceptions of (i) the correspondence which contains fees and therefore must be paid directly to the Treasurer of Virginia as specified in 9VAC25 91 60 A and (ii) variance petitions as specified in 9VAC25 91 160 shall be addressed to the cognizant DEQ regional office servicing the facility that is the subject of the correspondence. A list of regional offices and their addresses are available from the central office at the following address:

Mailing Address:

Department of Environmental Quality  
 Office of Spill Response and Remediation  
 P.O. Box 40009 1105  
 Richmond, VA 23240 0009 23218

Street Address:

Department of Environmental Quality  
 Office of Spill Response and Remediation  
 629 E. Main Street  
 Richmond, VA 23219

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## **9VAC25-91-90. Evaluation of chapter. (Repealed.)**

~~A. Within three years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendments, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

### Part II

#### Registration, Notification and Closure Requirements

## **9VAC25-91-100. Registration requirements.**

A. Section 62.1-44.34:19.1 of the Code of Virginia requires an operator of a facility located within the Commonwealth with an aggregate aboveground storage capacity of more than 1,320 gallons of oil or an operator of an individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil to register such facility or AST with the board and with the local director or coordinator of emergency services unless otherwise specified within this chapter.

B. Although the term "operator" includes a variety of persons who may share joint responsibility for compliance with this chapter, in fixing responsibility for compliance with the registration requirements, ~~DEQ~~ the board shall look first to the owner or a duly authorized representative of the facility or AST.

C. A duly authorized representative may submit the registration on the owner's behalf.

1. A person is a duly authorized representative only if:

a. The authorization is made in writing by the owner and indicates that the representative has signatory authority for the registration;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity (e.g., the plant manager, the operator of a facility or an AST, the superintendent, or a position of equivalent responsibility), or specifies an individual or a position having overall responsibility for environmental matters for the facility or company. A duly authorized representative thus may be either a

named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department along with the registration form.

2. Changes to authorization. If an authorization previously submitted is no longer accurate because a different individual or position has assumed responsibility for the overall operation of the facility or for environmental matters, a new authorization satisfying the requirements shall be submitted to the department prior to or together with any reports or information signed by that duly authorized representative.

3. Certification. Any person signing a registration document shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

D. The owner or a duly authorized representative of a new facility or AST, a converted facility or AST, ~~or~~ a facility or AST brought back into use after permanent closure, or a facility or AST whose title is transferred (change of ownership) shall register such facility or AST with the board and local director or coordinator of emergency services within 30 days after being brought into use or when title is transferred.

E. Registration shall include the following information and other information that may be required if approved by the board:

1. Facility and AST owner and operator information (e.g., name, address, and phone numbers);

2. Facility information (e.g., name, type, address, contact person and phone numbers, and aggregate storage capacity);

3. Tank and piping information (e.g., storage capacity, product stored, type of design and construction standards);

4. Other information that may be reasonably requested by the board; and

5. Owner certification of information.

F. The owner or a duly authorized representative of the facility or AST shall renew the registration required by this section every five years or whenever title to the facility or AST is transferred (change of ownership), whichever occurs first.

G. A facility or AST installed after ~~the effective date of this chapter~~ June 24, 1998, including an AST or facility operated by the federal government, shall not be registered without either (i) a review by the department of the permits, inspections, and certification of use required in accordance with the provisions of the Uniform Statewide Building Code, ~~the BOCA® National Building Code and NFPA Code~~ and obtained by the owner or a duly authorized representative from the local code officials or their designee or (ii) an inspection by the department. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with § 36-98.1 of the Code of Virginia.

**9VAC25-91-120. Aboveground storage tank closure.**

A. After ~~the effective date of this chapter~~ June 24, 1998, a facility or AST, including a facility or AST operated by the federal government, shall not be permanently closed without being registered ~~and the fee paid~~ and either (i) having a review performed by the department of the permits and inspections required in accordance with the provisions of the Uniform Statewide Building Code, ~~the BOCA® National Building Code, and NFPA Code~~ obtained by the owner or a duly authorized representative from the local code official or his designee or (ii) being inspected by the department.

1. For inspections by the department (e.g., where a permit is not issued by the local code official or his designee), at least 14 days notice to the department is required prior to the commencement of closure operations. Notice shall be made by the owner or a duly authorized representative.

2. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with § 36-98.1 of the Code of Virginia.

3. If the closure is in response to containment and cleanup actions that necessitate AST removal, the owner or a duly authorized representative of the facility or AST shall immediately notify the local code official and the department.

B. Closure operations shall be reported to the department by the owner or a duly authorized representative within 30 days after the permanent closure operation is completed.

C. Closure operations shall include the following:

1. Removal of all liquids, sludges, and vapors from the AST and associated piping. All wastes removed shall be disposed of in accordance with all applicable state and federal requirements.

2. For tanks being closed in place, the tank shall be rendered vapor free. Provisions must be made for adequate ventilation to ensure that the tank remains vapor free. Vent lines shall remain open and maintained in accordance with the applicable codes. All access openings shall be secured (normally with spacers to assist ventilation). The AST shall be secured against tampering and flooding. The name of

the product last stored, the date of permanent closure and PERMANENTLY CLOSED shall be stenciled in a readily visible location on the AST. Piping shall be disconnected. All pipes being closed in place shall be vapor free and capped or blind flanged.

3. An assessment of the AST site shall be conducted prior to completion of permanent closure operations.

a. In conducting the assessment, the owner or a duly authorized representative shall sample and test for the presence of petroleum hydrocarbons at the AST site in any area where contamination is likely to have occurred. These locations shall be subject to the review of the board. Sampling and testing shall be conducted in accordance with established EPA-approved analytical methods or other methods approved by the board.

(1) The owner or a duly authorized representative shall submit copies of the laboratory results, a description of the area sampled, a photograph of the site indicating sampled areas, and a site map indicating the location of the closed AST and associated piping as attachments to the closure form.

(2) If contaminated soils, contaminated groundwater, free product as a liquid or vapor, or other evidence of a release is discovered, the owner or a duly authorized representative shall immediately notify the board and conduct the cleanup in accordance with ~~department~~ board requirements.

b. The ~~department~~ board may consider an alternative to the soil sampling requirements of this subsection if the owner or a duly authorized representative of the AST demonstrates to the board's satisfaction that:

(1) There is no evidence of present or past contamination by providing records of monthly leak detection monitoring for the previous 12 months; and

(2) The facility or AST has operated an approved or approvable leak detection system.

4. A closure inspection conducted by either the department or the local building official, as discussed in subsection A of this section.

D. When deemed necessary by the board, the owner or a duly authorized representative of a facility or an AST that was permanently closed prior to ~~the effective date of this chapter~~ June 24, 1998, shall assess the site and close the AST in accordance with the requirements of this section.

E. The owner or a duly authorized representative shall maintain all records relating to compliance with this section for a period of not less than five years from the date the board receives notice of the completed closure. These records shall be made available to the board upon request.

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## Part III

### Pollution Prevention Requirements

#### **9VAC25-91-130. Pollution prevention standards and procedures.**

A. Pollution prevention standards and procedures for facilities are listed in this section. Aboveground storage tanks with an aggregate capacity of one million gallons or more shall comply with the requirements of subsections B and C of this section.

B. Requirements for aboveground storage tanks at facilities for 25,000 gallons or more. Section 62.1-44.34:15.1 of the Code of Virginia provides the following requirements for existing aboveground storage tanks at a facility with an aggregate aboveground storage capacity of one million gallons equal to or greater than 25,000 gallons of oil or for an existing individual aboveground storage tank with a storage capacity of one million gallons or equal to or greater than 25,000 gallons of oil, unless otherwise exempted.

##### 1. Inventory control and testing for significant variations.

a. The following aboveground storage tanks shall not be subject to inventory control and testing for significant variations:

- (1) Aboveground storage tanks totally off ground with all associated piping off ground;
- (2) Aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil; and
- (3) Aboveground storage tanks containing No. 5 or No. 6 oil for consumption on the premises where stored.

b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. ~~For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output.~~ Reconciliations of inventory measurements shall be conducted monthly. If a significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation and reconcile physical measurements to 60°F at 14.7 pounds per square inch absolute. This investigation shall be completed within five working days of the end of the second reconciliation period. If this investigation does not reveal the cause of the inventory variation, the operator shall notify the board and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause of the inventory variation. The testing method, schedule, and results of this additional testing shall be submitted to the board for review. For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of

the difference between the refinery's input and output of oil.

c. Inventory records shall be kept of incoming and outgoing volumes of oil from each tank. All tanks shall be gauged no less frequently than once every 14 days and on each day of normal operation. ~~Physical measurements shall be reconciled to 60°F at 14.7 pounds per square inch absolute.~~ For a refinery, the operator shall calculate the input and output of oil at the refinery on a daily basis. The operator shall reconcile daily inventory records with the inventory measurements conducted monthly.

##### ~~2. Formal inspections.~~

~~a. Each AST shall undergo formal external and internal tank inspections. The initial formal internal and external inspections for an existing AST shall be completed on or before June 30, 1998, unless otherwise specified within this chapter.~~

~~(1) All newly installed ASTs shall have initial formal inspections within five years after the date of installation.~~

~~(2) Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall complete the initial formal inspections within five years of the effective date of this chapter.~~

~~(3) An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and an inspection is deemed necessary by the board.~~

~~b. Inspections shall be conducted in accordance with the provisions of API Standard 653 or procedure approved by the board. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing or procedure approved by the board may be allowed in lieu of the internal inspection. An AST with a release prevention barrier or liner installed shall be internally inspected in accordance with the applicable provisions of API Standard 653 or API Recommended Practice 652 or procedure accepted by the board.~~

~~c. An API Standard 653 inspection conducted between January 1, 1991, and the effective date of this chapter may be accepted by the board if the operator provides supporting documentation to the board for review and approval.~~

##### ~~3. Formal reinspections.~~

~~a. Each AST shall undergo an external reinspection every five years in accordance with the provisions of API Standard 653 after the initial formal external inspection has been conducted.~~

~~b. Each AST with a storage capacity of 12,000 gallons of oil or greater shall undergo an internal reinspection in accordance with the provisions of API Standard 653~~

every 10 years after the initial formal internal inspection has been conducted.

~~(1) The board may require the internal reinspection sooner than 10 years if there is an indication that the corrosion rate established by the initial internal inspection or a subsequent reinspection has increased.~~

~~(2) The internal reinspection period may be extended beyond 10 years if the operator can demonstrate to the board that an extension of the reinspection period is warranted. The operator shall provide supporting documentation to the board for review and approval at least six months prior to the date the reinspection is due.~~

~~e. An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal reinspection unless the integrity of the AST is in question and an inspection is deemed necessary by the board.~~

~~4. 2. Secondary containment. Each secondary containment dike or berm shall be maintained and evaluated or certified with respect to its compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR 1910.106. The operator shall have this evaluation or certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.~~

~~a. Operators of facilities exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation completed within five years after the effective date of this chapter and every 10 years thereafter.~~

~~b. Operators of a newly installed AST shall have this evaluation completed prior to being placed into service and every 10 years thereafter.~~

a. The operator shall have and maintain secondary containment or another method approved by the board for each AST. The containment structure must be capable of containing oil and shall be constructed in accordance with 40 CFR Part 112 so that any discharge from the AST will not escape the containment before cleanup occurs. The operator shall have each secondary containment or approved method evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106. The operator of a facility existing on June 24, 1998, shall have had this evaluation or certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.

b. If the secondary containment cannot be certified to be in compliance with the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR

1910.106, the operator must upgrade, repair, or replace the secondary containment to meet the applicable requirements listed in subdivision 2 a of this subsection unless the board accepts the certification with qualifications.

c. The operator of a facility shall have the evaluation and certification performed every 10 years by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the board unless otherwise exempted.

d. The professional engineer shall not certify the secondary containment until all of the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106 have been met. In the event the professional engineer certifies the secondary containment with qualifications, such qualifications will be subject to review and approval by the board. If the certification contains qualifications that may impact the ability of the secondary containment to contain a discharge of oil as required by subdivision 2 a of this subsection, the deficiencies must be corrected and the secondary containment must be reevaluated and recertified by a professional engineer.

e. At a minimum, the certification statement for the secondary containment must contain the following statement: "Based on my evaluation, I hereby certify that each secondary containment structure for (insert the facility name and tank identification information) is in compliance with the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106."

f. The certification must be signed and sealed by a professional engineer licensed in the Commonwealth of Virginia or other state having reciprocity or by a person approved by the board.

g. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have had this evaluation completed on or before June 24, 2003, and every 10 years thereafter.

h. Operators of a newly installed AST shall have this evaluation completed prior to being placed into service and every 10 years thereafter.

~~5. 3. Safe fill and shutdown procedures.~~

a. Each operator shall institute and maintain records of safe fill, shutdown, and transfer procedures, or equivalent measures established approved by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur.

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(1) All receipts of oil shall be authorized by the operator or facility personnel trained by the operator who shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences. The operator shall ensure the transfer operation is monitored continually, either by manual or automatic means, until complete. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.

~~(2) If unattended during transfer operations, the AST shall be equipped with a high level alarm or other appropriate mechanism approved by the board that will immediately alert the operator to prevent an overflow event. Activation of the high level alarm or other appropriate mechanism shall initiate an immediate and controlled emergency shutdown of the transfer, either by manual or automatic means. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator, both by sight and hearing, to prevent an overflow situation. If the operator is in a control station, this alarm shall cause a warning light and audible signal in that station to activate. In addition, this system shall alarm on failure, malfunction or power loss. This high level alarm shall be tested prior to each receipt of oil. Records of testing shall be maintained at the facility.~~

b. All oil transfer areas where filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting those spills and overfills. The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112 (1997) (e.g., the maximum capacity of any single compartment of a vehicle loaded or unloaded in the transfer area).

c. If installed, an automatic shutdown system utilized during transfer of oil shall include the capability to direct the flow of oil to another tank capable of receiving the transferred oil or the capability to shut down the pumping or transfer system. This automatic shutdown system shall be tested prior to each receipt of oil and records of testing shall be maintained at the facility.

d. All ASTs shall be equipped with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the storage capacity, product stored and tank identification number shall be clearly marked on the tank at the location of the gauge. These gauges shall be calibrated annually.

## ~~6. Cathodic protection of piping and pressure testing of piping.~~

~~a. The requirement for cathodic protection of piping shall apply to buried piping only. Cathodic protection shall be~~

~~installed and maintained in accordance with the following applicable publications: API 1632, NFPA 30, NACE 0169, or NACE 0285. All piping above ground shall be protected from corrosion using methods and procedures referenced in NFPA 30, Chapter 2, Section 2-4.3 or a procedure approved by the board. Piping that passes through the wall of the containment berm or dike or under road crossings shall be protected from corrosion and damage using practices recommended in the publications listed in this subdivision.~~

~~b. 4. Pressure testing of piping.~~ All piping shall be pressure tested as specified in this subsection or using an equivalent method or measure approved by the board at intervals not to exceed five years. The operator of ~~an existing a~~ facility or AST existing on June 24, 1998, shall ~~complete~~ have completed the initial test on or before June 30, 1998, except operators of existing facilities or ASTs for which compliance was exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These excepted operators shall ~~complete~~ have completed the initial test within five years after the effective date of this chapter on or before June 24, 2003. All newly installed or repaired piping shall be tested before being placed into service.

(1) a. A pressure test may be a hydrostatic test at 150% maximum allowable working pressure (MAWP) or an inert gas test at 110% MAWP.

(2) b. A test conducted and certified by an API authorized piping inspector to be in conformity with the API 570 Piping Inspection Code is deemed an equivalent method of testing approved by the board.

(3) c. The board may consider on a case-by-case basis requests for approval of other equivalent methods or measures which conform to industry recommended practices, standards and codes. The operator shall submit a request for approval of a proposed equivalent method or measure to the board as specified in 9VAC25-91-160.

## ~~7. 5. Visual daily inspection and weekly inspections.~~

a. The operator or a duly authorized representative shall conduct a daily visual inspection for each day ~~of in which~~ normal operation occurs, but no less frequently than once every 14 days in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following:

(1) A complete walk-through of the facility property in the areas where this chapter applies to ensure that no hazardous conditions exist;

(2) An inspection of ground surface for signs of leakage, spillage, or stained or discolored soils;



- (3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured;
- (4) A visual inspection of the exterior tank shell to look for signs of leakage or damage; and
- (5) An evaluation of the condition of the aboveground storage tank and appurtenances.

b. The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in ~~the weekly inspection checklist subdivision of this section~~ subdivision 5 c of this subsection. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be maintained at the facility and provided to the board upon request. This checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

- (1) The operator of a new AST/facility shall develop the checklist within 90 days after the date of installation.
- (2) The operator of each facility existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall ~~develop~~ have developed the checklist ~~within 90 days after the effective date of this chapter by September 28, 1998.~~
- (3) Operators of facilities existing on June 24, 1998, and not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a checklist ~~within 90 days after June 30, 1993, by September 28, 1993,~~ shall be deemed to be in compliance with this checklist requirement as of ~~the effective date of this chapter~~ June 24, 1998.

c. Sample—weekly inspection checklist for aboveground storage tank systems:

- \_\_\_\_ (1) Containment dike or berm in satisfactory condition.
- \_\_\_\_ (2) Containment area free of excess standing water or oil.
- \_\_\_\_ (3) Gate valves used for emptying containment areas secured.
- \_\_\_\_ (4) Containment area/base of tank free of high grass, weeds, and debris.
- \_\_\_\_ (5) Tank shell surface, including any peeling areas, welds, rivets/bolts, seams, and foundation, visually inspected for areas of rust and other deterioration.
- \_\_\_\_ (6) Ground surface around tanks and containment structures and transfer areas checked for signs of leakage.

- \_\_\_\_ (7) Leak detection equipment in satisfactory condition.
- \_\_\_\_ (8) Separator or drainage tank in satisfactory condition.
- \_\_\_\_ (9) Tank water bottom drawoffs not in use are secured.
- \_\_\_\_ (10) Tank fill valves not in use are secured.
- \_\_\_\_ (11) Valves inspected for signs of leakage or deterioration.
- \_\_\_\_ (12) Inlet and outlet piping and flanges inspected for leakage.
- \_\_\_\_ (13) All tank gauges have been inspected and are operational.

Signature of Inspector	Date	Time

d. The operator shall promptly remedy unsatisfactory facility and equipment conditions observed in the daily and weekly inspections. The operator shall make repairs, alterations, and retrofits in accordance with American Petroleum Institute (API) Standard 653, Fourth Edition (April 2009), with Addendum 1 (August 2010) and Addendum 2 (January 2012), Steel Tank Institute (STI) standard STI-SP001, Fifth Edition (September 2011), industry standards, or methods approved by the board.

~~8. 6.~~ 6. Training of individuals. To ensure proper training of individuals conducting inspections required by subdivision ~~7 5~~ 6 of this subsection, the operator of a facility shall train personnel based on the following requirements:

a. Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility. Facility records shall contain the basic information and procedures required by subdivision ~~8 6~~ 6 c of this subsection. The required training may be conducted by the operator or by a third party. The training program established shall be maintained to reflect current conditions of the facility.

(1) The operator of a new facility shall establish the training program within six months after being brought into use.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall ~~establish~~ have established the training program ~~within six months after the effective date of this chapter by December 24, 1998.~~

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who ~~have~~ developed a training program ~~within six months after~~

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~~June 30, 1993~~ by December 31, 1993, shall be deemed to be in compliance with this training program requirement as of ~~the effective date of this chapter June 24, 1998~~, so long as that program reflects current conditions of the facility.

b. The required training shall be conducted for facility personnel as applicable. Personnel not receiving this initial training and who will be conducting these inspections shall receive the training prior to conducting any inspection.

(1) The operator of a new facility shall conduct the personnel training within 12 months after being brought into use and prior to personnel conducting any inspection.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall ~~conduct~~ have conducted the personnel training ~~within 12 months after the effective date of this chapter by June 24, 1999~~.

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the personnel training ~~within 12 months after June 30, 1993 by June 30, 1994~~, shall be deemed to be in compliance with this personnel training requirement as of ~~the effective date of this chapter June 24, 1998~~, so long as the training provided reflects current conditions of the facility and all inspections are current.

c. Training for personnel performing daily and weekly inspections shall address at a minimum:

(1) Basic information regarding occupational safety, hazard recognition, personnel protection, and facility operations;

(2) The procedures to be followed in conducting the daily visual and weekly facility inspections;

(3) The procedures to be followed upon recognition of a hazard or the potential for a hazard; and

(4) The procedure for evaluating the condition of the aboveground storage tank and appurtenances.

d. The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years and shall document this training in the facility records.

e. ~~All formal inspections and testing required by subdivision 2 of this subsection shall be conducted by a person certified to conduct the inspection or test. This certification shall be accomplished in accordance with the provisions of API Standard 650 and API Standard 653 or a procedure approved by the board. Proof of this certification shall be maintained in the facility records. The results of all tests and inspections required by subdivision 2 of this subsection shall be maintained at the~~

~~facility or at a location approved by the board for the life of the tank, but for no less than five years.~~

9. ~~7.~~ Leak detection. The operator shall operate, maintain, monitor and keep records of the system established for early detection of a discharge to groundwater (i.e., a method of leak detection) as required by 9VAC25-91-170 A 18 and contained in the facility's approved ODCP. These activities shall be inspected and approved by the ~~department~~ board.

~~B. Section 62.1-44.34:15.1 of the Code of Virginia provides the following requirements for~~ C. Requirements for aboveground storage tanks at facilities for one million gallons or more. In addition to the requirements of 9VAC25-91-130 B, the following requirements apply to existing aboveground storage tanks at facilities with an aggregate aboveground storage capacity of less than one million gallons but equal to or more than 25,000 gallons of oil or for an existing individual aboveground storage tank with a storage capacity of less than one million but equal to or more than 25,000 gallons of oil, unless otherwise exempted.

1. Inventory control and testing for significant variations.

~~a. The following aboveground storage tanks shall not be subject to inventory control and testing for significant variations:~~

~~(1) Aboveground storage tanks totally off ground with all associated piping off ground;~~

~~(2) Aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil; and~~

~~(3) Aboveground storage tanks containing No. 5 or No. 6 oil for consumption on the premises where stored.~~

~~b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output. Reconciliations of inventory measurements shall be conducted monthly. If the significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation. This investigation shall be completed within five working days of the end of the second reconciliation period. If this investigation does not reveal the cause of the inventory variation, the operator shall notify the board and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause for the inventory variation. The testing method, schedule, and results of this additional testing shall be submitted to the board for review.~~

e. Inventory records shall be kept of incoming and outgoing volumes of oil from each tank. All tanks shall be gauged no less frequently than once every 14 days and on each day of normal operation. Physical measurements shall be reconciled to 60°F at 14.7 pounds per square inch absolute.

2. Secondary containment. Each secondary containment dike or berm shall be maintained and evaluated or certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR Part 1910.106. The operator shall have this evaluation or certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.

a. Operators of facilities exempted under § 62.1 44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation completed within five years after the effective date of this chapter and every 10 years thereafter.

b. Operators of a newly installed AST shall have this evaluation completed prior to being placed into service and every 10 years thereafter.

3. Safe fill and shutdown procedures.

a. Each operator shall institute safe fill, shutdown and transfer procedures, or equivalent measures established by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur. All receipts of oil shall be authorized by the operator or facility personnel trained by the operator who shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the AST before the transfer operation commences. The operator shall ensure the transfer operation is monitored continually, either by manual or automatic means, until complete. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.

b. All oil transfer areas where filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting those spills and overfills. The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112 (1997) (e.g., the maximum capacity of any single compartment of a vehicle loaded or unloaded in the transfer area).

e. If installed, an automatic shutdown system utilized during transfer of oil shall include the capability to direct the flow of oil to another tank capable of receiving the transferred oil or the capability to shut down the pumping or transfer system. This automatic shutdown system shall be tested prior to each receipt of oil and records of testing shall be maintained at the facility.

d. All ASTs shall be equipped with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the storage capacity and tank identification number shall be clearly marked on the tank at the location of the gauge. These gauges shall be calibrated annually.

4. Pressure testing of piping. All piping shall be pressure tested using an equivalent method or measure approved by the board at intervals not to exceed five years. The operator of an existing facility or AST shall complete the initial test on or before June 30, 1998, except operators of existing facilities or ASTs for which compliance was exempted under § 62.1 44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These exempted operators shall complete the initial test within five years after the effective date of this chapter. All newly installed or repaired piping shall be tested before being placed into service.

a. A pressure test may be a hydrostatic test at 150% maximum allowable working pressure (MAWP) or an inert gas test at 110% MAWP.

b. A test conducted and certified by an API authorized piping inspector to be in conformity with the API 570 Piping Inspection Code is deemed an equivalent method of testing approved by the board.

e. The board may consider on a case by case basis requests for approval of other equivalent methods or measures which conform to industry recommended practices, standards and codes. The operator shall submit a request for approval of a proposed equivalent method or measure to the board as specified in 9VAC25-91-160.

5. Visual daily inspection and weekly inspections.

a. The operator or a duly authorized representative shall conduct a daily visual inspection for each day of normal operation in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following:

(1) A complete walk through of the facility property in the areas where this chapter applies to ensure that no hazardous conditions exist;

(2) An inspection of the ground surface for signs of leakage, spillage, or stained or discolored soils;

(3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured;

(4) A visual inspection of the exterior tank shell to look for signs of leakage or damage; and

(5) An evaluation of the condition of the aboveground storage tank and appurtenances.

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b. The operator or a duly authorized representative shall conduct a weekly inspection of the facility in the areas where this chapter applies, using a checklist which contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be maintained at the facility and provided to the board upon request. This checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

(1) The operator of a new AST/facility shall develop the checklist within 90 days after the date of installation.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall develop the checklist within 90 days after the effective date of this chapter.

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a checklist within 90 days after June 30, 1993, shall be deemed to be in compliance with this checklist requirement as of the effective date of this chapter.

c. Sample weekly inspection checklist for aboveground storage tank systems:

\_\_\_\_ (1) Containment dike or berm in satisfactory condition.

\_\_\_\_ (2) Containment area free of excess standing water or oil.

\_\_\_\_ (3) Gate valves used for emptying containment areas secured.

\_\_\_\_ (4) Containment area/base of tank free of high grass, weeds, and debris.

\_\_\_\_ (5) Tank shell surface, including any peeling areas, welds, rivets/bolts, seams, and foundation, visually inspected for areas of rust and other deterioration.

\_\_\_\_ (6) Ground surface around tanks and containment structures and transfer areas checked for signs of leakage.

\_\_\_\_ (7) Leak detection equipment in satisfactory condition.

\_\_\_\_ (8) Separator or drainage tank in satisfactory condition.

\_\_\_\_ (9) Tank water bottom drawoffs not in use are secured.

\_\_\_\_ (10) Tank fill valves not in use are secured.

\_\_\_\_ (11) Valves inspected for signs of leakage or deterioration.

\_\_\_\_ (12) Inlet and outlet piping and flanges inspected for leakage.

\_\_\_\_ (13) All tank gauges have been inspected and are operational.

Signature of Inspector	Date	Time
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6. Training of individuals. To ensure proper training of individuals conducting inspections required by subdivision 5 of this subsection, the operator of a facility shall train personnel based on the following requirements:

a. Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility. Facility records shall contain the basic information and procedures required by subdivision 6 c of this subsection. The required training may be conducted by the operator or by a third party. The training program established shall be maintained to reflect current conditions of the facility.

(1) The operator of a new facility shall establish the training program within six months after being brought into use.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall establish the training program within six months after the effective date of this chapter.

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a training program within six months after June 30, 1993, shall be deemed to be in compliance with this training program requirement as of the effective date of this chapter, so long as that program reflects current conditions of the facility.

b. The required training shall be conducted for facility personnel as applicable. Personnel not receiving this initial training and who will be conducting these inspections shall receive the training prior to conducting any inspection.

(1) The operator of a new facility shall conduct the personnel training within 12 months after being brought into use and prior to personnel conducting any inspection.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall conduct the personnel training within 12 months after the effective date of this chapter.

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the personnel training within 12 months after June 30, 1993, shall be deemed to be in compliance with

~~this personnel training requirement as of the effective date of this chapter, so long as the training provided reflects current conditions of the facility and all inspections are current.~~

~~e. Training for personnel performing daily and weekly inspections shall address at a minimum:~~

~~(1) Basic information regarding occupational safety, hazard recognition, personnel protection, and facility operations;~~

~~(2) The procedures to be followed in conducting the daily visual and weekly facility inspections;~~

~~(3) The procedures to be followed upon recognition of a hazard or the potential for a hazard; and~~

~~(4) The procedure for evaluating the condition of the aboveground storage tanks and appurtenances.~~

~~d. The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years and shall document this training in the facility records.~~

~~7. Leak detection. The operator shall operate, maintain, monitor and keep records of the system established for early detection of a discharge to groundwater (i.e., a method of leak detection) as required by 9VAC25-91-170 A-18 and contained in the facility's approved ODCP. These activities shall be inspected and approved by the department.~~

## 1. Formal inspections.

a. Each AST shall undergo formal external and internal tank inspections. The initial formal internal and external inspections for an AST existing on June 24, 1998, shall have been completed on or before June 30, 1998, unless otherwise specified within this chapter.

(1) All newly installed ASTs shall have initial formal inspections within five years after the date of installation.

(2) Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have completed the initial formal inspections on or before June 24, 2003.

(3) An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and an inspection is deemed necessary by the board.

b. Inspections shall be conducted in accordance with the provisions of American Petroleum Institute (API) Standard 653, Fourth Edition (April 2009), with Addendum 1 (August 2010) and Addendum 2 (January 2012); Steel Tank Institute (STI) standard STI-SP001, Fifth Edition (September 2011); or procedure approved by the board. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing or

procedure approved by the board may be allowed in lieu of the internal inspection.

c. An API Standard 653 inspection conducted between January 1, 1991, and June 24, 1998, may be accepted by the board if the operator provides supporting documentation to the board for review and approval.

d. All formal inspections and testing required by subdivisions 1 and 2 of this subsection shall be conducted by a person certified to conduct the inspection or test. This certification shall be accomplished in accordance with the provisions of API Standard 653, STI-SP001, or a procedure approved by the board. Proof of this certification shall be maintained in the facility records. The results of all tests and inspections required by subdivisions 1 and 2 of this subsection shall be maintained at the facility or at a location approved by the board for the life of the tank, but for no less than five years.

## 2. Formal reinspections.

a. Each AST shall undergo an external reinspection every five years. Inspections shall be conducted in accordance with the provisions of API Standard 653, STI-SP001, or other procedure accepted by the board after the initial formal external inspection has been conducted.

b. Each AST with a storage capacity of 12,000 gallons of oil or greater shall undergo an internal reinspection in accordance with the provisions of API Standard 653 or STI-SP001 every 10 years after the initial formal internal inspection has been conducted.

(1) The board may require the internal reinspection sooner than 10 years if there is an indication that the corrosion rate established by the initial internal inspection or a subsequent reinspection has increased.

(2) The internal reinspection period may be extended beyond 10 years if the operator can demonstrate to the board that an extension of the reinspection period is warranted. The operator shall provide supporting documentation to the board for review and approval at least six months prior to the date the reinspection is due.

c. An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal reinspection unless the integrity of the AST is in question and an inspection is deemed necessary by the board.

3. Safe fill and shutdown procedures - high level alarm. If unattended during transfer operations, the AST shall be equipped with a high level alarm or other appropriate mechanism approved by the board that will immediately alert the operator to prevent an overfill event. Activation of the high level alarm or other appropriate mechanism shall initiate an immediate and controlled emergency shutdown of the transfer, either by manual or automatic means. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility

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personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator, both by sight and hearing, to prevent an overflow situation. If the operator is in a control station, this alarm shall activate a warning light and audible signal in that station. In addition, this system shall alarm on failure, malfunction, or power loss. This high level alarm shall be tested prior to each receipt of oil. Records of testing shall be maintained at the facility.

4. Cathodic protection of piping. The requirement for cathodic protection of piping shall apply to buried piping only. Cathodic protection shall be installed and maintained in accordance with the following applicable publications: American Petroleum Institute Standard (API) 1632, Third Edition (2002), the Uniform Statewide Building Code and its referenced model codes and standards, or National Association of Corrosion Engineers (NACE) SPO285-2011. All piping above ground shall be protected from corrosion using methods and procedures referenced in the Uniform Statewide Building Code and its referenced model codes and standards, or a procedure approved by the board. Piping that passes through the wall of the containment berm or dike or under road crossings shall be protected from corrosion and damage using practices recommended in the publications listed in this subdivision.

## **9VAC25-91-140. Performance standards for aboveground storage tanks newly installed, retrofitted, or brought into use.**

A. All ASTs shall be built in accordance with the applicable design standards adopted by Underwriters Laboratories, the American Petroleum Institute, the Steel Tank Institute or other standard approved by the board.

B. All ASTs shall be strength tested before being placed in use in accordance with the applicable code or standard under which they were built.

C. ASTs that have the tank bottom in direct contact with the soil shall have a determination made by a corrosion professional as to the type and degree of corrosion protection needed to ensure the integrity of the tank system during the use of the tank. If a survey indicates the need for corrosion protection for the new installation, corrosion protection shall be provided.

D. ASTs installed after ~~the effective date of this chapter June 30, 1993,~~ shall have a release prevention barrier (RPB) installed either under or in the bottom of the tank. The RPB shall be capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection.

E. Existing ASTs that are retrofitted (reconstruction or bottom replacement) or brought back into use shall be brought into compliance with subsections A, B, C, and D of this section. The operator shall submit a schedule to the ~~board~~ department of the work to be performed in order to bring the existing AST into compliance with new-built construction

standards. This compliance schedule shall be submitted to the ~~board~~ department no less than six months prior to the anticipated completion date.

F. Operators of ASTs installed, retrofitted (reconstruction or bottom replacement) or brought back into use shall also comply with ~~9VAC25-91-130 A or~~ 9VAC25-91-130 B, ~~whichever is~~ and 9VAC25-91-130 C, as applicable.

G. All newly installed ASTs shall be constructed and installed in a manner consistent with the applicable standards and requirements found in ~~NFPA 30 and the BOCA@ National Building Code~~ the Uniform Statewide Building Code and its referenced model codes and standards or other standards approved by the board. Approval and any applicable permits shall be obtained from the local building official before construction starts.

H. Compliance dates for subsections A through G of this section.

1. Operators of a newly installed, retrofitted or brought-back-into-use facility or AST shall comply with the requirements of this section within 30 days prior to being placed into service.

2. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall ~~comply~~ have complied with these requirements within 120 days of the effective date of this chapter by October 22, 1998.

3. Operators of facilities existing on June 24, 1998, and not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have met these requirements on or before June 30, 1993, shall be deemed to be in compliance with these requirements as of the effective date of this chapter.

## **9VAC25-91-145. Performance standards for certain aboveground storage tanks located in the City of Fairfax.**

A. The requirements of this section apply to aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater existing prior to January 29, 1992, and located in the City of Fairfax.

B. All ASTs altered as required by this section shall be strength tested before being returned to use in accordance with the applicable code or standard under which they were built.

C. All ASTs shall contain a release prevention barrier (RPB) either under or in the bottom of the tank. The RPB shall be capable of (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. Existing elevated ASTs that are installed in containment areas meeting the requirements of an RPB or that are located within earthen containment dikes and are included in the daily and weekly inspections required by 9VAC25-91-130 B 5 shall be considered to be in compliance with the requirements of this section.

D. All ASTs altered as required by this section shall meet the applicable standards and requirements found in the Uniform Statewide Building Code or other standards approved by the board. Approval and all applicable permits shall be obtained from the local building official before altering ASTs.

E. Operators of facilities subject to this section shall meet the performance standards of this section no later than July 1, 2021.

**9VAC25-91-150. Recordkeeping and access to facilities.**

A. Each operator of a facility subject to this chapter shall maintain the following records:

1. All records relating to all required measurements and inventory and reconciliation of oil at the facility;
2. All records relating to required tank/pipe testing;
3. All records relating to spill events and other discharges of oil from the facility;
4. All supporting documentation for developed contingency plans;
5. All records for implementation and monitoring of leak detection and applicable provisions of 9VAC25-91-170 A 18 of Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter;
6. All records relating to training of individuals; ~~and~~
7. All records relating to facility and tank inspections; and
8. Any records required to be kept by statute or regulation of the board.

B. These records shall be kept by the operator of a facility at the facility or at an alternate location approved by the board for a period of no less than five years unless otherwise indicated.

C. Upon request, each operator shall make these records available to the ~~board~~ department and to the director or coordinator of emergency services for the locality in which the facility is located or to any political subdivision within one mile of the facility.

D. Operators shall maintain all records relating to compliance with this chapter for a period of no less than five years from the date the ~~board~~ department receives notice of the closure unless otherwise indicated. These records shall be made available to the ~~board~~ department at any time upon request.

**9VAC25-91-160. Variances to the requirements of Part III (9VAC25-91-130 et seq.) of this chapter.**

A. General criteria for granting a variance on a case-by-case basis.

1. The board is required by § 62.1-44.34:15.1 of the Code of Virginia to establish the criteria to grant variances of the AST pollution prevention requirements on a case-by-case basis and by regulation for categories of ASTs. Any person affected by this chapter may petition the board to grant a

variance of any requirement of Part III (9VAC25-91-130 et seq.) of this chapter.

2. The board will not grant any petition for a variance related to:

- a. Definitions;
- b. Registration;
- c. Classification of aboveground storage tanks; or
- d. Oil discharge contingency plans.

3. The board may grant a variance if:

- a. The applicant demonstrates to the satisfaction of the board that the alternate design or operation will result in a facility that is equally capable of preventing pollution of state water, land, and storm drains from the discharge of oil from new and existing ASTs. If the variance would extend a deadline, the petitioner shall demonstrate that a good faith effort to comply with the deadline was made;
- b. Granting the variance will not result in an unreasonable risk to human health or the environment; and
- c. Granting the variance will not result in a conflict with applicable local codes or ordinances.

4. In rendering a decision, the board may:

- a. Deny the petition;
- b. Grant the variance as requested;
- c. Grant a modified variance which:
  - (1) Specifies additional or modified requirements;
  - (2) Includes a schedule for:
    - (a) Periodic review of the modified requirements;
    - (b) Implementation by the facility of such control measures as the board finds necessary in order that the variance may be granted; or
    - (c) Compliance, including increments of progress, by the facility with each requirement of the variance; or
  - (3) Specifies the termination date of the variance.
- d. Grant a partial variance that:
  - (1) Specifies a particular part of the requirement;
  - (2) Specifies a particular part of the request;
  - (3) Includes a schedule for:
    - (a) Periodic review of the partial requirements;
    - (b) Implementation by the facility of such control measures as the board finds necessary in order that the variance may be granted; or
  - (4) Specifies the termination date of the variance.

5. An operator must comply with the requirements of this chapter even when a variance request is under consideration by the board. A variance request submitted but disapproved, or submitted but not yet decided, shall not

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constitute a defense or delay to any enforcement action undertaken by the department.

## B. Administrative procedures.

1. General requirements for the submission of a petition by the owner or a duly authorized representative. All petitions submitted to the board shall include:

- a. The owner's or duly authorized representative's name and address;
- b. A citation of the regulatory requirement to which a variance is requested;
- c. An explanation of the need or desire for the proposed action, including the reason the existing requirement is not achievable or is impractical compared to the alternative being proposed;
- d. An explanation of the impact to applicable local codes and ordinances;
- e. A description of the proposed action;
- f. The duration of the variance, if applicable;
- g. The potential impact of the variance on human health or the environment and a justification of the proposed action's ability to provide equivalent protection of human health and the environment as would compliance with the regulatory requirements;
- h. Enforcement action against or pending against the petitioner;
- i. Other information believed by the applicant to be pertinent; and
- j. The following statements signed by the owner or a duly authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. The petition, if granted, will not be in violation of any local codes or ordinances or pose an unreasonable risk to human health or the environment. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. In addition to the general information required of all petitioners under subdivision 1 of this subsection, the petitioner shall submit other information as may be required by the board.

3. All variance petitions and correspondence shall be submitted to the following address:

Mailing Address:

Department of Environmental Quality  
Office of Spill Response and Remediation  
P.O. Box ~~10009~~ 1105

Richmond, VA ~~23240-0009~~ 23218

Street Address:

Department of Environmental Quality  
Office of Spill Response and Remediation  
629 E. Main Street  
Richmond, VA 23219

## C. Petition processing.

1. After receiving a petition that includes the information required in subdivision B 1 of this section, the board will determine whether the information received is sufficient to render the decision. If the information is deemed to be insufficient, the board will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, may attempt to show that no reasonable basis exists for the request for additional information, or may withdraw the petition. If the board agrees that no reasonable basis exists for the request for additional information, the board will act in accordance with subdivision 3 b of this subsection. If the board continues to believe that a reasonable basis exists to require the submission of such information, the board will deny the petition.

3. After the petition is deemed complete:

- a. The board will review the petition;
- b. After evaluating the petition, the board will notify the applicant of the following final decision:
  - (1) Petition is denied;
  - (2) Requested variance is granted; or
  - (3) Modified or partial variance is granted;
- c. The board shall send written notification of the variance to the chief administrative officer of the locality in which the facility is located; and
- d. If the board grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the board that the petitioner has failed to comply with any variance requirements.

## D. Variance by regulation for categories of ASTs.

1. ASTs totally off ground with all shall not be subject to inventory control or testing for significant variation if:

- a. All associated piping is off ground;
- b. All associated buried piping is double walled; or
- c. All associated piping meets the requirements using a combination of subdivisions 1 a and 1 b of this subsection shall not be subject to inventory control or testing for significant variation.

2. ASTs with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil shall not be subject to inventory control or testing for significant variation.



3. ASTs containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control or testing for significant variation.

4. ASTs with release prevention barriers (RPBs) ~~with all and with an established corrosion rate and cathodic protection that protects the entire area of the tank bottom~~ shall not be subject to inventory control or testing for significant variation if:

- a. ~~All associated piping is off ground;~~
- b. ~~All associated buried piping is double walled; or~~
- c. ~~All associated piping meets the requirements using a combination of subdivisions 4 a and 4 b of this subsection with an established corrosion rate and cathodic protection that protects the entire area of the tank bottom shall not be subject to inventory control or testing for significant variation.~~

5. ASTs with release prevention barriers (RPBs) ~~with all and with secondary containment that is 72 hours impermeable~~ shall not be subject to inventory control or testing for significant variation if:

- a. ~~All associated piping is off ground;~~
- b. ~~All associated buried piping is double walled; or~~
- c. ~~All associated piping meeting the requirements using a combination of subdivisions 5 a and 5 b of this subsection and with secondary containment that is 72 hours impermeable shall not be subject to inventory control or testing for significant variation.~~

6. ASTs that meet the construction and installation standards of ~~STI F911-93, F921-93, or F941-94~~ STI-F911, F921, or F941, or equivalent standards approved by the board shall not be subject to inventory control or testing for significant variation.

7. For refineries with a continuous leak detection monitoring system and cathodic protection of the AST and piping, a significant variation of inventory shall be considered a loss in excess of 3.0% by weight of the difference between the refinery's input and output.

8. Vaulted tanks meeting UL 2245 or an equivalent standard approved by the board shall not be subject to inventory control or testing for significant variation. The inspections for these tanks required in 9VAC25-91-130 B 5 need to be conducted no more frequently than once every 31 days. The criteria for the visual daily inspection and weekly inspection checklist shall be incorporated into a monthly checklist.

9. An AST used in the production/manufacturing process with full containment that is 72 hours impervious shall not be subject to inventory control or testing for significant variation.

10. An AST of 12,000 gallons or less with full containment that is 72 hours impervious, inside a building and used for the storage of heating oil consumed on the premises shall

not be subject to inventory control or testing for significant variation.

11. A double-walled AST shall not be subject to inventory control or testing for significant variation. The inspections required in 9VAC25-91-130 B 5 need to be conducted no more frequently than once every 31 days. The criteria for the visual daily inspection and weekly inspection checklist shall be incorporated into a monthly checklist.

Part IV

Oil Discharge Contingency Plan (ODCP) Requirements

**9VAC25-91-170. Contingency plan requirements and approval.**

A. Section 62.1-44.34:15 of the Code of Virginia requires that all facility oil discharge contingency plans must conform to the requirements and standards determined by the board to be necessary to ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas; to respond to the threat of an oil discharge; and to contain, cleanup, and mitigate an oil discharge within the shortest feasible time. Each such plan shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the facility) at the time the plan is submitted for approval and, in order to be approvable, shall contain, at a minimum, the following requirements:

1. The name of the facility, geographic location and access routes from land and water if applicable;
2. The names of the operators of the facility including address and phone number;
3. A physical description of the facility consisting of a plan of the facility which identifies the applicable oil storage areas, transfer locations, control stations, above and below ground oil transfer piping within the facility boundary (and including adjacent easements and leased property), monitoring systems, leak detection systems and location of any safety protection devices;
4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil or groups of oil with similar characteristics stored, transferred or handled at the facility. To be equivalent, the submission shall contain the following:
  - a. Generic or chemical name of the oil;
  - b. Hazards involved in handling the oil; and
  - c. A list of fire-fighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same fire-fighting procedures;
5. The maximum storage or handling capacity of the facility and the individual tank capacities or, in the case of a pipeline, the average daily throughput of oil;

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6. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in the event of a discharge;

7. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list;

8. The position title, address and phone number of the individuals authorized to act on behalf of the operator to implement containment and cleanup actions. This individual shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated;

9. The position title of the individuals designated by the operator to ensure compliance during containment and cleanup of a discharge with applicable federal, state and local requirements for disposal of both solid and liquid wastes;

10. Identification and ~~insurance~~ insurance by contract or other means acceptable to the board of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The board will accept a letter of understanding between the operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 12 of this subsection, shall be included unless these capabilities are already on file with the ~~board~~ department;

11. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge is the instantaneous release of the volume of the largest tank on the facility (125% of the volume of the largest tank for facilities with multiple tanks within a single containment dike) during adverse weather conditions. Facilities shall take into consideration that due to hydraulic pressure of the release, the secondary containment will not contain this volume in its entirety. The worst case discharge for a pipeline shall be based upon the volume of a discharge calculated using the maximum pressure, velocity, and elevation, and the largest pipe size and pipeline location. If facility design and operation indicates that this worst case discharge scenario does not meet the intent of this chapter, the board may require submission of other worst case scenarios on a facility-specific basis;

12. Inventory of facility containment equipment, including specification of quantity, type, location, time limits for

gaining access to the equipment, and identification of facility personnel trained in its use;

13. Identification and location of natural resources at risk (including, but not limited to, surface waters as indicated on the applicable USGS quadrangle maps, groundwater, public water supplies, public and private water wells and springs, state or federal wildlife management areas, wildlife refuges, management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks), priorities for protection and means of protecting these resources;

a. In addition to the requirements set forth in this subdivision, the operator of a facility with an aggregate aboveground storage or handling capacity of one million gallons or greater of oil shall conduct a groundwater characterization study (GCS) within the geographic boundaries of the facility to be submitted as part of the contingency plan. The operator of such a facility shall utilize upgradient and downgradient GCS monitoring wells to satisfy this requirement. At the time of a discharge, the operator of such a facility shall conduct further characterization of the groundwater as required by the board;

b. For purposes of satisfying the requirement to identify and locate natural resources at risk, the operator of a pipeline shall identify surface waters as indicated on the applicable USGS quadrangle maps, public water supplies, state or federal wildlife management areas, wildlife refuges, management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks which could reasonably be expected to be impacted by the discharge. At the time of a discharge, the operator of a pipeline shall conduct a complete groundwater characterization study as required by the board and identify other natural resources at risk including public and private wells or springs which could reasonably be expected to be impacted by the discharge;

14. Identification and location of any municipal or other services (including, but not limited to, storm drains, storm water collection systems and sanitary sewer systems) at risk, notification procedures applicable and means of protection of these services. The identification and location of all municipal services shall include those services for which official records are available. The operator of a pipeline shall determine which sections of the system are located in areas that would require an immediate response by the operator to prevent hazards to the public if a discharge occurred;

15. If applicable, the facility's responsibility for responding to a discharge from a vessel moored at the facility and the identity of the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously;

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge or the substantial threat of a discharge;

17. The facility's oil inventory control procedures. Facilities shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards;

18. A detailed description of a system for early detection of a discharge to groundwater, utilizing up-gradient and down-gradient leak detection monitoring wells or other groundwater protection measures acceptable to the board (i.e., visual, interstitial, vapor and leak detection groundwater monitoring wells). The system will be operated, maintained and monitored in the manner approved and be subject to inspection by the department under the pollution prevention requirements of Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter. Operators subject to subdivision 13 a of this subsection may utilize such GCS wells to meet this requirement when approved by the board;

19. The procedures to be followed, upon detection of a discharge of oil, for testing and inspection of all tanks, piping and all oil transfer associated equipment that could reasonably be expected to be a point source for the discharge. These procedures shall be conducted within the shortest feasible time, include a progression of written procedures from visual inspection to formal testing and be conducted in accordance with recognized engineering practices;

20. The facility's preventive maintenance procedures applicable to the critical equipment of an oil storage and transfer system as well as the maximum pressure for each oil transfer system. The term "critical equipment" shall mean equipment that affects the safe operation of an oil storage and handling system;

21. A description of the security procedures used by facility personnel to avoid intentional or unintentional damage to the facility; and

22. A post-discharge review procedure to assess the discharge response in its entirety.

B. All nonexempt facility operators shall file with the board the application form for approval of the contingency plan. This form shall be submitted with the required contingency plan and shall be completed insofar as it pertains to the facility. The operator shall sign and date the certification statement on the application form. If the operator is a corporation, the form shall be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the form shall be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the form shall

be signed by a general partner or the sole proprietor. All forms shall be acknowledged before a Notary Public.

C. Contingency plans shall be filed with and approved by the board. The plan shall be submitted to the board at the address specified in 9VAC25-91-60 A. A copy of the original with the facility-specific information and the approval letter shall be retained at the facility and shall be readily available for inspection.

D. An operator of multiple facilities may submit a single contingency plan encompassing more than one facility if the facilities are located within the defined boundaries of the same city or county or if the facilities are similar in design and operation. The plan shall contain site-specific information as required by subsection A of this section for each facility. The site-specific information shall be placed in appendices to the plan.

Upon renewal of an approved contingency plan submitted under this subsection, the board shall consider the individual facilities subject to all provisions of subsections E through J of this section.

E. Oil discharge contingency plans shall be reviewed, updated if necessary and resubmitted to the board for approval every 60 months from the date of approval unless significant changes occur sooner. Operators shall notify the board of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the facility;
2. An increase in the maximum storage or handling capacity of the facility that would change the measures to limit the outflow of oil, response strategy or operational plan in the event of the worst case discharge;
3. A decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;
4. A change in the type of product dealt in, stored or handled by any facility covered by the plan for which a MSDS or its equivalent has not been submitted as part of the plan; or
5. A change in the method or operation utilized for the early detection of a discharge to groundwater (i.e., change in a method of leak detection).

F. Updated plans or certification for renewal of an existing plan shall be submitted to the board for review and approval not less than 90 days prior to expiration of approval of the current plan. Submittal of the certification for renewal for an existing plan shall be made in accordance with the provisions of subsection B of this section. All notifications of changes, renewals, submissions and updates of plans required by this chapter shall be directed to the respective regional office.

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G. An oil discharge exercise may be required by the board to demonstrate the facility's ability to implement the contingency plan. The board will consult with the operator of the facility prior to initiating an exercise. Where appropriate, the board will ensure coordination with federal agencies prior to initiation of an exercise.

H. The board may, after notice and opportunity for a conference pursuant to ~~§ 9-6-14-11~~ § 2.2-4019 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if it determines that:

1. The plan as submitted fails to provide sufficient information for the board to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and clean up an oil discharge within the shortest feasible time;
2. A significant change has occurred in the operation of the facility covered by the plan;
3. The facility's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or
4. There has been a significant change in the best available technology since the plan was approved.

I. The board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;
2. The plan cannot be implemented as approved;
3. A term or condition of approval of this chapter has been violated; or
4. The facility is no longer in operation.

J. A Facility Response Plan (FRP) developed pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCA § 2716 (1996), may be accepted as meeting the requirements of subdivisions A 1 through A 22 of this section. The operator shall submit a copy of the FRP and a copy of the currently valid FRP approval letter for the facility for review and approval by the board. The FRP shall contain a cross reference in order to index pages for the specific requirements of the ODCP. The FRP shall also contain the satisfaction of the requirements of subdivisions A 13 a and A 18 of this section. This information shall be resubmitted in accordance with the renewal period established by federal statute or regulation but in no instance shall the renewal period exceed five years. The board shall be notified of any plan amendments within 30 days of the amendment.

~~1So in original.~~

## Part V

### Groundwater Characterization Study (GCS) and GCS Well Monitoring Requirements

#### **9VAC25-91-180. Groundwater characterization study (GCS).**

A. Section 62.1-44.34:15 of the Code of Virginia requires the operator to apply to the board for approval of an ODCP. The ODCP shall be accompanied by other relevant information required by the board (e.g., groundwater characterization study (GCS) of each facility with an aggregate aboveground storage capacity of one million gallons or greater of oil). The purpose of this GCS is to determine baseline conditions and flow of groundwater within the geographic boundaries of the facility. The operator's results of the GCS shall be subject to the review and approval of the ~~department~~ board and shall be submitted to the department as part of the Oil Discharge Contingency Plan (ODCP) referenced in Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter. The GCS wells are required by 9VAC25-91-170 A 13 a in the ODCP requirements.

B. Section 62.1-44.34:15.1 of the Code of Virginia requires that the operator of a facility with an aggregate capacity of one million gallons or greater of oil conduct monthly gauging and inspection, monitoring of well headspace, and quarterly sampling and laboratory analysis of all groundwater monitoring wells located at the facility to determine the presence of petroleum or petroleum by-product contamination. ~~The monitoring requirements of these GCS wells are in 9VAC25-91-190, GCS well monitoring.~~

C. Although GCS monitoring wells may be approved for use as part of a leak detection system, the GCS well monitoring requirement should not be confused with any requirement for leak detection monitoring wells required by 9VAC25-91-170 A 18.

#### **9VAC25-91-200. Reporting; GCS well monitoring report.**

A. All observations and data gathered as a result of the requirements in 9VAC25-91-190 and any other data obtained from those same wells shall be maintained at the facility, compiled, and submitted to the ~~board~~ department annually in the following format:

- I. Monthly gauging of GCS groundwater monitoring wells.
  - 1.0 Summary of measurement procedures.
  - 2.0 Table of static water levels recorded from monitoring wells.
- II. Quarterly GCS groundwater vapor monitoring.
  - 1.0 Summary of groundwater and vapor collection procedures.
  - 2.0 Table of vapor measurements from monitoring well headspace.
  - 3.0 Table of groundwater monitoring well visual inspection results.

- III. Annual GCS groundwater quality evaluation.
  - 1.0 Summary of groundwater collection methods.
  - 2.0 Summary of groundwater analytical results and interpretation.
  - 3.0 Table of analytical methods used.
  - 4.0 Table of analytical results.
  - 5.0 Table of field and trip blank results.
  - 6.0 Groundwater laboratory data including chain-of-custody forms.
  - 7.0 Laboratory quality assurance review.

B. The annual GCS monitoring report shall include the facility name and address, operator, and consultant, if any, who prepared the report, contact person and the date the report was submitted.

Part VI

~~Referenced Publications~~ Resources Available

**9VAC25-91-220. Referenced publications. Resources available.**

A. This chapter (Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91)) does not contain all requirements for aboveground storage tanks in Virginia. The resources listed in this section have been included to assist with complying with requirements of this regulation. Section 36-99.6 of the Code of Virginia requires the Board of Housing and Community Development to incorporate, as part of the building code, regulations adopted and promulgated by the State Water Control Board governing the installation, repair, upgrade, and closure of aboveground storage tanks. Portions of this chapter are incorporated into the Virginia Uniform Statewide Building Code (USBC). The USBC referenced model codes and standards apply as promulgated by the Virginia Department of Housing and Community Development.

~~A. B.~~ The following documents or portions thereof are resources referenced or provide guidance in this chapter:

- 1. Underwriters Laboratories Standards:
  - a. Specification 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids," Seventh Ninth Edition;
  - b. Standard 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks," Second Edition, December 28, 2006;
- 2. American Petroleum Institute (API) Standards:
  - a. API 12B: Specification 12B and Supplement 2, October 1, 1990, October 2008, "Specification for Bolted Tanks for Storage of Production Liquids," Thirteenth Fifteenth Edition;
  - b. API 12D: Specification 12D, and Supplement 2, 1982 as supplemented 1985, October 2008, "Specification for Field Welded Tanks for Storage of Production Liquids," Ninth Eleventh Edition;

- c. API 12F: Specification 12F, and Supplement 1, 1982 as supplemented 1988, October 2008, "Specification for Shop Welded Tanks for Storage of Production Liquids," Tenth Twelfth Edition;
- d. API 570: Piping Inspection Code, "Inspection, Repair, Alteration, and Rerating of In Service Piping Systems, First Edition, June 1993;
- e. d. API 575: May 2005, "Inspection of Existing Atmospheric and Low-pressure Storage Tanks," Second Edition, May 2005;
- e. API 620: Standard 620, 1990, February 2008, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks," Eighth includes Addendum 1 (2009), Addendum 2 (2010), and Addendum 3 (2012), Eleventh Edition;
- f. API 650: Standard 650, 1988; June 2001, "Welded Steel Tanks for Oil Storage," Eighth Eleventh Edition;
- g. API 651: Recommended Practice 651, January 2007, "Cathodic Protection for Above Ground Petroleum Storage Tanks," Third Edition;
- g. h. API 652: Recommended Practice 652, April 1991, October 2005, "Lining of Aboveground Petroleum Storage Tank Bottoms," First Third Edition;
- h. API 653: API Standard 653, January 1991, "Tank Inspection, Repair, Alteration, and Reconstruction," First Edition, incorporates supplement 1, January 1992;
- i. API 2350: Recommended Practice 2350, March 1987 January 2005, "Overfill Protection for Petroleum Storage Tanks,"; Third Edition;
- 3. National Fire Protection Association (NFPA) Standards:
  - ~~a. NFPA 30, "Flammable and Combustible Liquids Code," 1996 edition;~~
  - ~~b. NFPA 30A, "Automotive and Marine Service Station Code," 1990 edition;~~
- 4. National Association of Corrosion Engineers (NACE) Standards: ~~Recommended Practice 0285-95 (1995), "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems";~~
- 5. 40 CFR Part 112 (1997), "Oil Pollution Prevention";
- 6. 29 CFR Part 1910.106 (1997), "Flammable and Combustible Liquids";
- 7. Uniform Statewide Building Code (USBC), 1996 edition;
- 8. 3. Virginia Statewide Fire Prevention Code (SWFPC), 1996 edition; (March 1, 2011); and
- 9. Building Officials & Code Administrators International, Inc. (BOCA); BOCA National Building Code, 1996 edition:
  - ~~a. Chapter 32 Flammable and Combustible Liquids;~~
  - ~~b. Chapter 23 Hazardous Materials; and~~

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40-4. Steel Tank Institute (STI), Standards and Recommended Practices:

- a. STI Standard for Diked Aboveground Storage Tanks ~~F911-93~~ F911;
- b. STI Standard for Aboveground Tanks with Integral Secondary Containment ~~F921-93~~; F921, revised July 2011;
- c. STI Fireguard™ ~~Thermally Insulated Specifications for Fireguard protected Aboveground Storage Tank Standard F941-94~~ Tanks F941.

~~B. The issue of the industry specification, standard, or code, including addenda or changes, described in this chapter as referenced publications, shall be used unless circumstances warrant the use of an earlier date and are specifically authorized by the board.~~

~~C. Standards and codes listed in 9VAC25-220 A are specifically authorized for use by the board. Other standards and codes may be used if specifically authorized by the board.~~

~~D. This chapter refers to resources that may be used to comply with provisions of the regulations. These resources are available through the Internet; therefore, in order to assist the regulated community, the resource reference document owner's contact information, including uniform resource locator or Internet address is provided for each of the resource references listed in this section.~~

1. Underwriter's Laboratories, <http://www.ul.com/global/eng/pages/solutions/standards/>, Underwriter's Laboratories, 2600 NW Lake Road, Camas, WA 98607-8542.
2. American Petroleum Institute, <http://api.org>, American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005-4070.
3. National Association of Corrosion Engineers, <http://nace.org>, National Association of Corrosion Engineers, 1440 South Creek Drive, Houston, TX USA 77084-4906.
4. Code of Federal Regulations, <http://www.gpo.gov/fdsys/>.
5. Virginia Uniform Statewide Building Code, <http://www.dhcd.virginia.gov/StateBuildingCodesandRegulations/VirginiaUniformStatewideBuildingCode.htm>, Virginia Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219.
6. Virginia Statewide Fire Prevention Code, <http://www.dhcd.virginia.gov/StateBuildingCodesandRegulations/>, Virginia Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219.
7. Steel Tank Institute, [www.steeltank.com](http://www.steeltank.com), Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047.

**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 of a form with a hyperlink to access it. 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 (9VAC25-91)

~~Registration for Facility and Aboveground Storage Tank (AST), DEQ Form 7540-AST (rev. 10/08).~~

[Registration for Facility and Aboveground Storage Tank \(AST\), DEQ Form 7540-AST \(rev. 7/13\)](#)

[Approval Application for Facility Oil Discharge Contingency Plan \(rev. 8/07\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-91)

American Petroleum Institute (API) Standard API 570: Piping Inspection Code, November 2009, "Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems, Alteration of Piping Systems," First Edition, June 1993; Third Edition

American Petroleum Institute (API) Standard API 653, April 2009, "Tank Inspection, Repair, Alteration, and Reconstruction," includes Addendum 1 (2010) and Addendum 2 (2012), Fourth Edition

American Petroleum Institute (API) Standard API 1632: Recommended Practice 1632, 2002 "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," Third Edition

National Association of Corrosion Engineers (NACE) SP0285-2011, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"

Steel Tank Institute (STI), Standard STI - SP001 "Standard for the Inspection of Aboveground Storage Tanks," Fifth Edition, September 2011

VA.R. Doc. No. R12-3011; Filed July 22, 2013, 9:05 a.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Fast-Track Regulation

**Title of Regulation:** 12VAC5-615. Authorized Onsite Soil Evaluator Regulations (repealing 12VAC5-615-10 through 12VAC5-615-470).

**Statutory Authority:** §§ 32.1-163.5 and 32.1-164 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

Public Comment Deadline: September 11, 2013.

Effective Date: September 30, 2013.

Agency Contact: Allen Knapp, Director, Office of Environmental Health Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7475, or email allen.knapp@vdh.virginia.gov.

Basis: The Board of Health does not have a statutory mandate to establish a program for authorized onsite soil evaluators (AOSEs) because of Chapter 892 of the 2007 Acts of Assembly. The board still has legislative authority to accept and review evaluations and designs from licensed onsite soil evaluators pursuant to §§ 32.1-163, 32.1-163.6, and 32.1-164 of the Code of Virginia.

Purpose: The AOSE regulations were promulgated July 1, 2002, pursuant to provisions of §§ 32.1-163.4, 32.1-136.5, 32.1-164, and 32.1-164.1:01 of the Code of Virginia. Chapter 892 of the 2007 Acts of Assembly amended and re-enacted §§ 32.1-163, 32.1-164, 54.1-300, 54.1-2300, 54.1-2301, and 54.1-2302 of the Code of Virginia. The legislation rescinded certificate requirements administered by the Department of Health (VDH). In its place, the legislation directed the Department of Professional and Occupational Regulation (DPOR) to promulgate regulations for persons seeking a license as an onsite soil evaluator. The legislation obviates the need for the Board of Health to administer a certificate program for AOSEs.

DPOR adopted regulations for onsite soil evaluators (18VAC160-20). The AOSE regulations unnecessarily establish a certificate program for qualifying individuals as AOSEs, including conflict of interest requirements. Documentation requirements in the AOSE regulations for reports and designs are now contained in VDH policies that implement other regulations (e.g., 12VAC5-610, 12VAC5-613, 12VAC5-640, and 12VAC5-630). Processing time limits and definitions have been established in the Code of Virginia and agency policies, which further render the AOSE regulations unnecessary.

Rationale for Using Fast-Track Process: The agency does not expect controversy because the regulations are being repealed. DPOR has regulations for the licensing of onsite soil evaluators. The Board of Health's program will not change with the repeal of this regulation. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals in DPOR now administers the program.

Substance: All requirements in 12VAC5-615 will be repealed.

Issues: The primary advantage to the public and the Commonwealth will be to remove unnecessary regulations that are not being implemented by VDH. Repealing the regulation will prevent confusion. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Department of Health (VDH) proposes to repeal these regulations.

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

Estimated Economic Impact. The 2007 Virginia General Assembly enacted House Bill 3134, which transferred implementation, administration, and enforcement of licensing requirements for onsite soil evaluators from VDH to the Department of Professional and Occupational Regulation with administration by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals promulgated regulations for onsite soil evaluators on July 1, 2009 (18VAC160-20). House Bill 3134 abrogated the Board of Health's authority to license Authorized Onsite Soil Evaluators (AOSEs); and while Title 32.1 of the Code of Virginia contains other references to the Board of Health's regulation of AOSEs, VDH has successfully implemented those statutory provisions independent of 12VAC5-615. Thus, the proposed repeal of these regulations will have no impact beyond potentially reducing confusion as toward the licensure rules for AOSEs in effect.

Businesses and Entities Affected. As mentioned above, the proposed repeal of these regulations will have no impact beyond potentially reducing confusion as toward the licensure rules for onsite soil evaluators in effect. Firms involved on onsite soil evaluation would be most interested in the rules.

Localities Particularly Affected. The proposed repeal of these regulations does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal of these regulations is unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations is unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations is unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations is unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed repeal of these regulations is unlikely to significantly 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

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(10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 of Health concurs with the conclusion reached by the Department of Planning and Budget's economic impact analysis that the benefits of the proposed changes will likely exceed the costs of all proposed changes.

Summary:

*The regulatory action repeals 12VAC5-615 to comport with Chapter 892 of the 2007 Acts of Assembly, which transferred implementation, administration, and enforcement of licensing requirements for onsite soil evaluators to the Department of Professional and Occupation Regulation.*

VA.R. Doc. No. R13-3127; Filed July 16, 2013, 9:37 a.m.

## **Final Regulation**

Title of Regulation: **12VAC5-650. Schedule of Civil Penalties (adding 12VAC5-650-10 through 12VAC5-650-100).**

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Effective Date: September 13, 2013.

Agency Contact: Allen Knapp, Environmental Health Coordinator, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7475, or email allen.knapp@vdh.virginia.gov.

Summary:

*This regulation establishes a uniform schedule of civil penalties for violations of the Board of Health's regulations pertaining to (i) conventional and alternative onsite sewage systems and (ii) alternative discharging sewage treatment systems for individual single-family*

*homes. Since the proposed stage of the regulations, the agency added a definition of the term "modify" to address a public comment and corrected a citation.*

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

## **CHAPTER 650 SCHEDULE OF CIVIL PENALTIES**

### **12VAC5-650-10. Definitions.**

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

"Board" means the State Board of Health.

"Department" means the Virginia Department of Health.

["Modify" means to alter a treatment works, excluding actions taken to "operate" the treatment works and "maintenance" activities as those terms are defined in § 32.1-163 of the Code of Virginia. ]

"Transportation of sewage or septage" means actions associated with removing septage, sludge, or sewage from an onsite sewage system, a sewerage system, or other treatment works, including, but not limited to, using a pump or other device or gravity flow to collect septage, sludge, or sewage in a tank or other vessel intended to contain the septage, sludge, or sewage during transport to another location.

### **12VAC5-650-20. Purpose and authority.**

The board has promulgated this chapter to:

1. Establish a uniform schedule of civil penalties for violations of 12VAC5-610, the Sewage Handling and Disposal Regulations (or successor), and 12VAC5-640, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (or successor);

2. Support enforcement activities necessary to discharge the board's responsibility to supervise and control the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage as they affect the public health and welfare;

3. Support enforcement activities necessary to discharge the board's responsibility to exercise due diligence to protect the quality of ground and surface waters; and

4. Guide the State Health Commissioner in charging civil penalties.

### **12VAC5-650-30. Applicability.**

A. This chapter applies only in those localities where the local government has entered into a contract with the department for the operation of local and district health departments. It does not apply in any locality that has not entered into such a contract.

B. This chapter applies to those activities conducted pursuant to 12VAC5-610 and 12VAC5-640 or successor



regulations promulgated by the board as described herein. Except as provided in § 32.1-164 J of the Code of Virginia, this chapter may not be construed to limit the board's or the commissioner's authority to enforce any law or regulation administered by the board or to enforce any order of the board.

### **12VAC5-650-40. Administration.**

A. The board has the responsibility to promulgate, amend, and repeal regulations necessary to ensure the safe and sanitary handling and disposal of sewage via onsite sewage systems and alternative discharging sewage systems as these affect public health. Nothing in this chapter may be construed to limit the board's authority to enforce any law administered by it, any regulation promulgated by it, or any case decision rendered by it or by the commissioner.

B. The State Health Commissioner is the chief executive officer of the department. The commissioner has the authority to act, within the scope of regulations promulgated by the board, for the board when it is not in session. The department is designated as the primary agent of the commissioner for the purpose of administering this chapter. The commissioner may delegate his powers under this chapter.

C. Section 32.1-30 of the Code of Virginia requires each county and city to establish and maintain a local department of health that is responsible for enforcing all health laws of the Commonwealth and regulations of the board. With the concurrence of each county and city government affected, the commissioner may create a district health department composed of such local health departments. The commissioner appoints the local or district health director in those localities that enter into a contract with the department for the operation of the local or district health department. In such localities the local or district health director is responsible for implementing this chapter. The authority to implement this chapter is hereby delegated to local and district health directors who are employees of the department; such local and district health directors may delegate to subordinates as they deem necessary. Nothing in this section may be construed as limiting the commissioner's authority to delegate his powers as provided in law.

### **12VAC5-650-50. Conduct declared unlawful.**

The following conduct is hereby declared unlawful and subject to civil penalties in accordance with this chapter:

1. Violation of any provision of 12VAC5-610, the Sewage Handling and Disposal Regulations or successor regulation promulgated by the board, including failure to comply with the provisions, requirements, conditions, or standards contained in a construction permit or in an operating permit.
2. Violation of any provision of 12VAC5-640, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings or successor regulation promulgated by the board, including failure to comply with

the provisions, requirements, conditions, or standards contained in a construction permit or in an operating permit.

3. Failure to comply with any order issued by the board or commissioner.

### **12VAC5-650-60. Uniform schedule of civil penalties.**

A. There is hereby established a uniform schedule of civil penalties for the following violations of the board's regulations:

1. Install or cause to install, modify or cause to modify, use or operate an onsite or alternative discharging sewage system without a permit issued by the commissioner: \$100 for the first violation, \$150 for each additional violation.
2. Discharge treated or untreated sewage on the surface of the ground or into the waters of the Commonwealth without a permit: \$100 for the initial violation, \$150 for each additional violation.
3. Fail to obtain or keep a contract for operation, maintenance, or monitoring of an onsite or alternative discharging system to the extent that such contract is a requirement of the board's regulations: \$50 for the initial violation, \$100 for each additional violation.
4. Fail to submit to the department a laboratory test result, or an inspection or other report to the extent that such report is a requirement of the board's regulations: \$50 for the initial violation, \$100 for each additional violation.
5. To the extent such activities are not regulated by another agency of the Commonwealth, engage in unlawful transportation or handling of sewage or septage: \$100 for the initial violation, \$150 for each additional violation.
6. Any unlawful act described in [ ~~12VAC5-650-60~~ 12VAC5-650-50 ] not specifically described in this subsection: \$25 for the initial violation, \$50 for each additional violation.

B. The department may not charge civil penalties pursuant to this chapter for activities related to land development.

C. The department may not charge civil penalties pursuant to this chapter for an unoccupied structure unless such structure contributes to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases.

### **12VAC5-650-70. Criminal prosecution precluded.**

In accordance with § 32.1-164 J of the Code of Virginia, designation of a particular violation for a civil penalty pursuant to this chapter must be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases.

### **12VAC5-650-80. Civil summons ticket.**

A. The department must prepare a civil summons ticket for use in implementing this chapter.

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B. In addition to any information the department deems necessary, the ticket must contain the following information:

1. A statement notifying the recipient that he may make an appearance in person or in writing by mail to the department prior to the date fixed for trial in court;
2. A statement that any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged;
3. The physical address, hours of operation, and mailing address for the local or district health department responsible for issuing the civil summons;
4. A statement that civil penalties may be paid only by cashier's check or certified check made payable to the Treasurer of Virginia; and
5. The date fixed for trial in general district court.

**12VAC5-650-90. Authority to issue civil summons ticket; penalties collected.**

A. Any employee of the department who has been delegated authority pursuant to this chapter may issue a civil summons ticket in accordance with this chapter.

1. The civil summons ticket may be delivered in person after presentation of proper credentials.
2. The department may deliver a civil summons ticket in any other manner provided by law.

B. All civil penalties collected pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3 of the Code of Virginia.

**12VAC5-650-100. Requirements for civil summons ticket.**

A. Before the department may issue any civil summons ticket pursuant to this chapter, the following must occur:

1. The department shall notify the alleged violator as required in the board's regulations;
2. At least 30 days shall have passed from the date the alleged violator received notice of the violation; and
3. The violation must remain uncorrected.

B. Violations arising from the same operative set of facts shall not be charged more than once in any 10-day period nor shall the department charge more than one civil penalty from the same set of operative facts.

VA.R. Doc. No. R08-1522; Filed July 24, 2013, 11:41 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Fast-Track Regulation

Title of Regulation: **12VAC30-100. State Programs (repealing 12VAC30-100-400 through 12VAC30-100-490).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 11, 2013.

Effective Date: September 26, 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.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance, § 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this action is to repeal the regulations associated with the Health Insurance for the Working Uninsured Program. In 1998 the General Assembly directed DMAS to promulgate regulations implementing a public-private partnership to create a greater safety net to assist working individuals who either could not afford health insurance or otherwise had no sustainable access to health insurance. DMAS was tasked with creating a network of hospitals, managed care organizations, and other health care providers to donate funds to DMAS that would cover the cost of insurance for the working uninsured. Despite efforts on the part of DMAS, an insufficient number of health care providers expressed interest in the program to make it viable. Due to a lack of support in the private sector, this program never got off the ground. The program was set to implement in 1998, therefore the program regulations have never had any legal effect. This action has no effect on the health, safety, or welfare of the public.

Rationale for Using Fast-Track Process: The fast-track process was chosen for this action because it is essentially a housekeeping matter that is noncontroversial. It is also part of the Governor's Regulatory Reform Initiative. While the substance of this action is technical in nature, because there is no General Assembly mandate, court order, or other law directing the agency to repeal this regulation, DMAS cannot use the final exempt process for this action.

Substance: The amendments repeal Part IV (12VAC30-100-400 et seq.), covering the defunct Health Insurance for the Working Uninsured Program.

This program failed to implement over a decade ago, and these regulations are not necessary. There is no chance of this program being revived in light of both the Medicaid Works program and federal health care reform. The Medicaid Works program permits Medicaid enrolled individuals to work and earn incomes above the Medicaid income limits. The expansion of the availability of insurance for the working

uninsured pursuant to national healthcare reform also negates any chance that this program would be resurrected.

Issues: The primary advantage of this action to both the public and the agency is the removal of unnecessary regulations from the Virginia Administrative Code. There are no disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will remove a currently obsolete program known as the Health Insurance for the Working Uninsured from the Virginia Administrative Code.

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

Estimated Economic Impact. The proposed changes will remove a currently obsolete program known as the Health Insurance for the Working Uninsured from the Virginia Administrative Code.

According to the Department of Medical Assistance Services (DMAS), in 1998, the General Assembly mandated the establishment of the Health Insurance for the Working Uninsured program. The goal of the program was to create a greater safety net, through public and private partnerships, to assist working individuals who either could not afford health insurance or otherwise had no sustainable access to health insurance. In addition to the public funds that may be appropriated, DMAS was tasked with creating a network of hospitals, managed care organizations, and other health care providers to donate funds to DMAS that would cover the cost of insurance for the working uninsured. In response to the legislative mandate, these regulations were promulgated to establish the rules for the program.

However, no public funds were appropriated to the program and an insufficient number of health care providers expressed interest in the program to make it viable. Due to the lack of funding, the program has never started. In addition, the program regulations contained a sunset provision terminating the program two years after its start. Thus, these regulations have been obsolete for about twelve years. Since this program has never started, the repeal of the program language is not anticipated to have any significant economic impact, but removal of obsolete regulatory text would help improve clarity of the Virginia Administrative Code.

Businesses and Entities Affected. The proposed changes are not anticipated to directly affect any businesses or entities.

Localities Particularly Affected. No locality will be particularly affected.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. No costs and other effects on small businesses are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Part IV Health Insurance for the Working Uninsured (12VAC30-100-400 et seq.). The agency concurs with this analysis.

Summary:

*As part of the Governor's Regulatory Reform Initiative, the amendments repeal the regulations associated with the Health Insurance for the Working Uninsured Program (12VAC30-100-490 et seq.) proposed by the 1998 General Assembly. The regulations for the program contain a sunset provision terminating the program two years after its start. These regulations have been obsolete for 12 years and are therefore being repealed.*

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## Part IV

### Health Insurance for the Working Uninsured (Repealed)

#### **12VAC30-100-400. Applicability. (Repealed.)**

~~In the event that definitions or provisions of this part conflict with definitions or provisions of the Bureau of Insurance statutes or regulations governing health maintenance organizations, then the relevant Bureau of Insurance definitions and provisions shall take precedence.~~

#### **12VAC30-100-410. Definitions. (Repealed.)**

~~A. In this part, the Health Insurance Program for Working Uninsured Individuals will be referred to as "program." When reference is made to eligibility for the program, or to program benefits, the intent is to refer specifically to the health insurance premium subsidies provided through the program.~~

~~B. The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Appeal" means any written communication from a subscriber or his representative which clearly expresses that he wants to present his case to a reviewing authority.~~

~~"Applicant" means an individual who has applied for or is in the process of applying for health insurance premium subsidies.~~

~~"Applicant's or subscriber's representative" means a person who, because of the applicant's or subscriber's mental or physical incapacity, is authorized to complete, sign, or withdraw an application for the benefits of the program; activate the appeal process; and otherwise supply any information requested by the program on behalf of the applicant or subscriber.~~

~~"Contractor" means a health maintenance organization in each pilot site that enters into a contract with DMAS to provide the Essential Health Benefits Plan to beneficiaries of the program.~~

~~"Covered services" means services as defined in the Essential Health Benefits Plan.~~

~~"Date of application" means either the date that the contractor officially receives an application from an employee or the date that the contractor officially receives enough employee applications from any given employer to meet its minimum participation requirement if the contractor has such a requirement.~~

~~"Department" or "DMAS" means the Department of Medical Assistance Services.~~

~~"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract or plan covering the eligible employee.~~

~~"Disenrollment" means a subscriber who voluntarily decides to discontinue receiving subsidized health insurance premiums, or is determined ineligible by DMAS to continue receiving subsidized health insurance benefits.~~

~~"Eligible alien" means an individual who satisfies the alien status criteria for medical assistance services administered by the Department of Medical Assistance Services (see 12VAC30-40-10 and 12VAC30-110-1300).~~

~~"Eligible person" or "eligible employee" means a full time employee of a primary small employer determined by DMAS to meet the qualifications needed to receive premium subsidies under the program. Other employees who do not meet the necessary income requirements may enroll in the contractor's health plan if they pay the cost of the premium beyond any contribution from their employer. However, throughout this part, employees described as eligible for the program are those eligible for premium subsidies.~~

~~"Eligible employer" or "eligible firm" means any employer determined by the program and the contractor to meet the qualifications needed in order for its employees to be qualified to enroll in the program.~~

~~"Emergency services" means those health care services that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus. Emergency services provided within the plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the health maintenance organization could reasonably be expected to cause the subscriber's condition to worsen if left unattended.~~

~~"Essential Health Benefits Plan" means a health benefit package developed pursuant to § 38.2-3431 C of the Code of Virginia.~~

~~"Family" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract or plan covering the eligible employee.~~

~~"Grievance" means any request by a subscriber to a contractor to resolve a dispute.~~

~~"Health care plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, as distinguished from mere indemnification against the cost of the services, on a prepaid basis.~~

~~"Health insurance premium subsidy" means the portion of the health insurance premiums paid by the program on behalf of an individual eligible to participate in the program.~~

"HMO" means a health maintenance organization which undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Initial enrollment period" means a period of at least 30 days.

"Late subscriber" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer after the initial enrollment period provided under the terms of the health benefit plan.

"Minimum participation requirement" means the minimum percentage of employees in a given firm who are required to enroll in the health plan before the contractor agrees to provide coverage to that firm. The minimum participation requirement may be met through the enrollment of subsidized as well as nonsubsidized employees within any given firm.

"Network" means doctors, hospitals or other health care providers who participate or contract with a managed care plan and, as a result, agree to accept a mutually agreed upon sum or fee schedule as payment in full for covered services.

"Program" means the Health Insurance Program for Working Uninsured Individuals. References to eligibility for the program specifically refer to subsidized health insurance premium payments.

"Qualified employee" means an employee who works for a small group employer on a full time basis; has a normal work week of 30 or more hours; has satisfied applicable waiting period requirements; and is not a part time, temporary or substitute employee.

"Service area" means a clearly defined geographic area in which the health maintenance organization has arranged for the provision of health care services to be generally available and readily accessible to subscribers.

"Small employer" means an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the program year.

"Subscriber" means an individual who has been determined to be eligible for, and is receiving, premium subsidies through the program.

**12VAC30-100-430. Program contractors. (Repealed.)**

A. The department shall contract with one HMO in each pilot site to market the program, enroll the beneficiaries, and provide medical care services. These HMOs are referred to as the contractors.

B. The contractors shall be responsible for the following services:

1. Each contractor shall market the program to the employers and employees in its respective pilot area and enroll subscribers into its health plan according to provisions of the contract between the contractor and DMAS.

2. The contractors shall provide, at a minimum, all medically necessary covered services provided under the Essential Health Benefits Plan, except as otherwise modified or excluded in this part. The contractor shall provide subscribers with evidence of coverage and charges for health care services as provided for in § 38.2-4306 of the Code of Virginia.

3. The contractor shall provide emergency services as provided for in § 38.2-4300 of the Code of Virginia.

4. The contractors shall pay for services furnished in facilities or by practitioners outside the contractors' networks if the needed medical services or necessary supplementary resources are required by the Essential Health Benefit Plan and are not available in the contractors' networks. The contractor may establish procedures to authorize these services.

5. The contractors shall verify that applicants for premium subsidies are employed full time by primary small employers, that the employers agree to pay if not at least 50% of the cost of employee only or single coverage for their employees then that percentage as specified in the appropriate contract with DMAS, and that the employer has not offered health insurance to its employees in the past 12 months.

6. The contractor shall maintain such records as may be required by state law and regulation. The contractor shall furnish such required information to DMAS or to the Attorney General of Virginia or his authorized representatives on request and in the form requested.

7. The contractor shall ensure that the health care provided to its subscribers meets all applicable federal and state mandates and standards for quality.

C. DMAS shall monitor to determine if the contractor:

1. Imposes on subscribers premium amounts in excess of premiums permitted as outlined in the contract between the contractor and DMAS.
2. Misrepresents or falsifies information that it furnishes to DMAS, an individual, or any other entity.

D. If DMAS determines that a contractor is not in compliance with its program contract, DMAS may impose sanctions on the contractor. The sanctions may include but shall not be limited to:

1. Developing procedures with which the contractor must comply to eliminate specific noncompliance;
2. Freezing subsidy payments for new program applicants;
3. Imposing a fine if the contractor does not take steps to correct a problem in a timely fashion; and
4. Terminating the contractor's program contract.

E. When DMAS determines that a contractor committed one of the violations specified in subsection C of this section, DMAS shall consider imposing one or more of the sanctions listed in subsection D of this section. Any sanction imposed

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pursuant to subsection D of this section shall be binding upon the contractor. The contractor shall have the appeals rights for any sanction imposed pursuant to subsection D of this section as specified in 12VAC30-100-470.

## **12VAC30-100-440. Subscribers' employers. (Repealed.)**

In order for their employees to be eligible for premium subsidies, employers must meet the following requirements and assume the following responsibilities:

1. Employers must be located in the geographical region covered by the pilot program.
2. Firms must be small employers (employ an average of at least two but not more than 50 employees on business days during the preceding calendar year and employ at least two employees on the first day of the plan year).
3. Employers shall provide assurances to the contractor that they have not offered health insurance to their employees to be covered in the 12 months preceding the application for their employees to the program.
4. Employers shall agree to pay either at least 50% of the cost of the health insurance premium for a single employee (an employee only policy) or a different percentage agreed upon by the Director of DMAS in the appropriate contract and must agree to cover such costs for all employees.
5. Employers shall agree to withhold the employee's share of the premium payment from their pay, and to send the employee's and the employer's share of the premium payment to the contractor on a monthly basis.
6. A contractor may impose a minimum participation requirement for each firm before any employees of that firm receive coverage through the program.

## **12VAC30-100-450. Program reimbursement. (Repealed.)**

A. The employer shall pay a minimum of either at least 50% of his employees' health insurance premiums or that amount specified in the applicable contract with DMAS but also may pay some portion of employees dependents' premiums. The subscriber shall pay up to a maximum of 25% for himself and up to a maximum of 50% for his dependents with the subsidy completing the balance.

B. Premium subsidy payments to cover the portion of the premium not paid by the employer and the employee will be made by DMAS to the contractor according to procedures established by DMAS. Payments under this program are limited to the cost of the health insurance premium subsidy and will not include copayments, deductibles, or any other costs incurred by the subscribers of the program.

C. In all cases in which program premium subsidies have been incorrectly paid to the contractor, the program shall seek recovery from the contractor according to the department's recovery policies. Likewise, the contractor shall seek recovery from the program for premium subsidies which have not been paid or have been incorrectly paid.

D. Cases of suspected misrepresentation or fraud shall be investigated according to the department's fraud prevention and control policies, and any other applicable statutory provision.

## **12VAC30-100-460. Confidentiality. (Repealed.)**

All information maintained by DMAS containing personal data including name, address, employer, insurance company, health status, application to or enrollment in the program, and any other information which could identify or be reasonably used to identify any applicant or subscriber in the program shall be maintained in confidence according to all applicable DMAS policies and procedures and any other applicable laws or regulations. Such information may not be disclosed to any individual or organization without the written and dated consent of the applicant, subscriber, or subscriber's representative.

## **12VAC30-100-470. Appeals process. (Repealed.)**

A. Appeals relating to disputes about eligibility for or payment of health insurance premium subsidies shall be managed by the department. All other subscriber appeals, grievances or complaints shall be managed by the contractor.

### **B. Subscriber appeals:**

1. An applicant or subscriber who is dissatisfied with a decision, action, or inaction of the contractor with regard to the provision of medical services may request and shall be granted an opportunity to appeal an adverse decision to the contractor as provided for under 14VAC5-210-70 H.

2. An applicant, subscriber, or subscriber's representative may request and shall be granted an opportunity to appeal an adverse decision to DMAS when:

a. His application for health insurance premium subsidies is denied. However, if an application for premium subsidies is denied because of a lack of funds, then there shall be no right to appeal.

b. DMAS takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of premium subsidies.

c. DMAS does not act with reasonable promptness on his application for premium subsidies.

3. An applicant's, subscriber's, or subscriber representative's appeal to DMAS shall be heard as provided for under the applicable provisions of the department's appeals regulations (Part I of 12VAC30-110). The following listing of the sections of the department's appeals regulations indicates whether the provision is applicable to appeals heard under this program:

12VAC30-110-10	Applicable
12VAC30-110-20	Applicable
12VAC30-110-30	The federal regulations imposing a time limitation for appeals do not apply to this

	program. However, for this program, appeals shall be scheduled and conducted within 90 days, unless waived in writing by the appellant or appellant's representative.
12VAC30-110-40 through 12VAC30-110-80	Applicable
12VAC30-110-90	Not applicable. An applicant's right to appeal is stipulated in subdivision 2 of this subsection.
12VAC30-110-100 through 12VAC30-110-190	Applicable
12VAC30-110-200	Not applicable. Decisions or actions regarding the provision of medical services shall be appealed to the contractor.
12VAC30-110-210-A	Applicable
12VAC30-110-210-B	Not applicable if there is a right to appeal under subdivision 2 of this subsection.
12VAC30-110-220 through 12VAC30-110-350	Applicable
12VAC30-110-360	With the exception that subsection A, providing for an independent medical assessment, is not applicable to this program.
12VAC30-110-370	Applicable
12VAC30-110-380	Applicable

4. The following provisions shall apply to appeals by an applicant, subscriber or subscriber's representative to DMAS:

a. If an applicant is found eligible for the premium subsidy as a result of an appeal, the program shall reimburse the applicant directly for the premium subsidy amount paid by the applicant, beginning with a payment for the month following the application. The applicant shall provide proof of payment of premiums for health insurance.

b. Cases in or pending appeal shall be considered filled subscriber openings until the appeal process has been completed.

C. Employer appeals. An employer who is dissatisfied with a decision, action, or inaction of the contractor with regard to the firm's meeting the requirements of this part so that their employees may participate in the program, may request, and shall be granted an opportunity to appeal an adverse decision to the contractor. The contractor shall develop an appeals process to respond to complaints from employers. This appeals process shall follow the model for applicant appeals as provided for under 14VAC5-210-70.

D. Contractor appeals. In accordance with the terms of the contract, contractors shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the contractor shall proceed in accordance with the appeals provisions of the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). Pursuant to §§ 11-70 and 11-71 of the Code of Virginia, DMAS establishes an administrative appeals procedure, which the contractor may elect to appeal decisions on disputes arising during the performance of its contract. Pursuant to § 11-71 of the Code of Virginia, such appeal shall be heard by a hearing officer; however, in no event shall the hearing officer be an employee of DMAS. In conducting the administrative appeal, the hearing officer shall follow the hearing procedure used in § 9-6.14:12 of the Code of Virginia.

**12VAC30-100-480. [Reserved]. (Repealed.)**

**12VAC30-100-490. Sunset provision. (Repealed.)**

Program termination shall be two years after the date the program is implemented. If funding is not available or is depleted after implementation and before the two year operation period ends, the program will terminate prior to the projected two year period. If additional funding becomes available, the program may be extended as funding permits and as legislatively and administratively approved. Part IV (12VAC30-40-400 et seq.) of this chapter shall become inoperative upon program termination.

VA.R. Doc. No. R13-3584; Filed July 17, 2013, 10:00 a.m.

**Fast-Track Regulation**

**Title of Regulation:** 12VAC30-120. Waivered Services (repealing 12VAC30-120-450 through 12VAC30-120-480).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 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@dmass.virginia.gov.

**Basis:** Section 32.1-325 of the Code of Virginia grants the Board of Medical Assistance Services the authority to

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administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

DMAS initiated this home-based and community-based waiver in concert with 1993 General Assembly action to significantly reform the assisted living (formerly the adult care residence) industry per §§ 63.1-25.1, 63.1-172, and 63.1-173.3 of the Code of Virginia. DMAS derived its authority to operate this waiver from § 1915(b) of the Social Security Act, which permitted Medicaid coverage of these services in assisted living facilities (ALFs) as an alternative to more costly nursing facility care.

**Purpose:** This regulatory action concerns the assisted living facility program that DMAS implemented in August 1996, which was designed to serve individuals living in community assisted living facilities. In 1993, the General Assembly approved significant legislation to reform the assisted living facility (formerly the adult care residence) industry. The 1993 and 1995 legislative sessions amended § 63.1-25.1 of the Code of Virginia requiring that auxiliary grant (AG) recipients be evaluated by a case manager or other qualified assessor to determine their need for residential care. Section 63.1-173.3 of the Code of Virginia was also amended to require that the uniform assessment instrument be completed upon admission and at subsequent intervals as determined by regulations promulgated by the Board of Social Services for each auxiliary grant resident. Section 63.1-172 of the Code of Virginia was also amended to establish two-tier licensing for adult care residences. Residences were required to offer a level of service to individuals who had physical or mental impairments and who required at least a moderate level of assistance with activities of daily living.

DMAS sought federal approval of a waiver, under the authority of § 1915(c) of the Social Security Act, to provide home-based and community-based services for persons who were determined to be at risk of nursing home placement in the near future but for the provision of the type of care that was provided in an assisted living facility. In 1994, Chapter 965, Item 396 F of the 1994 Acts of Assembly authorized DMAS to seek this waiver to make payments for intensive assisted living services provided to residents of ALFs who were AG recipients. This DMAS waiver was initiated in August 1996.

DMAS assisted living waiver regulations established coverage criteria and payment for two types of assisted living services available to recipients of AG residing in licensed adult care residences: (i) regular assisted living services for those individuals who did not meet the criteria for waiver services but who required at least a moderate level of

assistance with activities of daily living, and (ii) intensive assisted living services for those individuals who met the level of care criteria for waiver services.

The DMAS waiver permitted Medicaid reimbursement for regular assisted living services (\$3.00 per diem) and intensive assisted living services (\$6.00 per diem) using level of care criteria, which was essentially the same as that used in the elderly or disabled (ED) waiver that is now known as the elderly or disabled with consumer direction (EDCD) waiver.

In March of 2000, the Centers for Medicare and Medicaid Services (CMS) declined to renew its approval of this waiver due to concerns about the program's operation thereby withdrawing federal financial participation. This waiver nonrenewal concerned four issues: (i) concern that these individuals be provided their choice of either institutional or home-based and community-based services; (ii) concern that these individuals be reevaluated at least annually; (iii) concern whether the state's licensing and certification standards were being met for services provided in the waiver; and (iv) concern that all facilities covered by § 1616(e) of the Social Security Act comply with the state's requirements for board and care facilities.

In spite of efforts on the part of DMAS to address these concerns, CMS terminated its federal financial participation with the Commonwealth for this waiver. Consequently, DMAS elected to continue the intensive assisted living payments for the few remaining individuals in this waiver under a grandfather provision in the budget. The Commonwealth's funding for this service was discontinued as a result of budget reductions in 2010 (Chapter 874, Item 297 VV of the 2010 Acts of Assembly). Because Medicaid providers are permitted up to one year from the date of service in which to submit their claims for reimbursement, DMAS had to retain operational regulations until June 30, 2011. Subsequent to the passage of this time period, DMAS is initiating this regulatory action to repeal these regulations.

Since this program's enabling federal waiver has been discontinued, there is no more need for these related regulations, so they are being repealed in this action. This action has no effect on the health, safety, or welfare of citizens of the Commonwealth or on the agency.

**Rationale for Using Fast-Track Process:** CMS denied Virginia any further federal funding for the Assisted Living Services for Auxiliary Grant Individuals waiver program. Also, the General Assembly discontinued funding these additional payments for this program. The termination of both funding sources thereby leaves these regulations as serving no legal purpose. As DMAS had no other options in this matter, the agency determined that repealing the regulations would not be controversial, and appropriate for the fast-track option as permitted by § 2.2-4012.1 of the Code of Virginia.

**Issues:** There are no disadvantages to the Commonwealth or the agency in this action. In 2010, when the state's funding for this service was terminated, there were only about 1100



individuals for whom DMAS was making this additional payment to the approximately 248 ALFs. The DMAS payments were not a significant source of funding for these facilities. There is no disadvantage to the ALF industry either because they have not received these supplementary payments for a number of years. There are no advantages or disadvantages associated with this regulatory action for the public.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to 2010 Acts of Assembly, Chapter 874, Item 297 VV, the Department of Medical Assistance Services (DMAS) proposes to repeal regulatory language for supplemental payments for regular and intensive assisted living services provided to auxiliary grant recipients.

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

Estimated Economic Impact. These regulations address assisted living services provided through Medicaid to individuals receiving an auxiliary grant. This waiver program was originally implemented in August 1996 with funding from both state and federal sources. In March 2000, the Centers for Medicare and Medicaid Services (CMS) discontinued the federal financial support for this waiver due to concerns about the programs operation. Following CMS's action, this program had been continued with state-only funds. Prior to July 1, 2010, the program provided \$3 per day supplemental reimbursement for regular assisted living services and \$6 per day for intensive assisted living services from Virginia Medicaid for recipients in addition to the payments provided by the auxiliary grant.<sup>1</sup> However, 2010 Acts of Assembly, Chapter 874, Item 297 VV, terminated the supplemental funding for these services under Medicaid as of July 1, 2010. Because Medicaid providers are permitted up to one year from the date of service in which to submit their claims for reimbursement, operational regulations had been retained until June 30, 2011. Since that time has passed, DMAS proposes to repeal these regulations that are currently obsolete.

In 2010, there were about 1,100 individuals for whom approximately \$1.4 million in state only funds were paid to 248 assisted living facilities. However, no significant economic effect, other than removing potentially confusing obsolete language, is expected upon promulgation of these regulations because the funding had already been eliminated as of July 1, 2010. These regulations will simply effectuate the last step of the statutory mandate by removing currently obsolete regulations.

Businesses and Entities Affected. In 2010, when the state's funding for this service was terminated, there were about 1,100 individuals for whom these additional payments were made to approximately 248 assisted living facilities.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant impact on employment is expected upon promulgation of these regulations since the funding for these services had already been eliminated as of July 1, 2010.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected upon promulgation of these regulations since the funding for these services had already been eliminated as of July 1, 2010.

Small Businesses: Costs and Other Effects. There were approximately 278 providers providing services to auxiliary grant recipients. DMAS believes that most, if not all, are likely to be small businesses, due to the nature of this industry. However, the proposed repeal of these regulations will not impose costs on small businesses upon promulgation since the funding for these services had already been eliminated by the statutory mandate as of July 1, 2010.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not impose an adverse impact on small businesses upon promulgation since the funding for these services have already been eliminated by the statutory mandate since July 1, 2010.

Real Estate Development Costs. No effect on real estate development costs is expected.

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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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.

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<sup>1</sup> The assisted living facility rate for auxiliary grant recipients was \$1,112 per month in 2010.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning 12VAC30-120-450 et seq., Assisted Living Services for Individuals Receiving Auxiliary Grants Residing in Adult Care Residences. The agency concurs with this analysis.

## Summary:

*The amendments repeal Part VII Assisted Living Services for Individuals Receiving Auxiliary Grants Residing in Adult Care Residences (12VAC30-120-450 et seq.) that the Department of Medical Assistance Services implemented in August 1996 and was designed to give additional financial support for qualifying individuals living in assisted living facilities under the authority of a federal waiver. The Centers for Medicare and Medicaid Services discontinued this waiver in March 2000 due to concerns about the programs operation. This action is needed in order to repeal these waiver regulations that are no longer operable.*

### Part VII

Assisted Living Services for Individuals Receiving Auxiliary Grants Residing in Adult Care Residences (Repealed)

#### **12VAC30-120-450. Definitions. (Repealed.)**

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

~~"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.~~

~~"Assessor" means a case manager employed by a public human service agency or other qualified assessor which has a contract with the Department of Medical Assistance Services to perform assessments and authorize service in an adult care residence.~~

~~"Assisted living facility" or "facility" means an adult care residence which has been licensed by the Department of Social Services to provide a level of service for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Within assisted living, there are two payment levels for recipients of an auxiliary grant: regular assisted living and intensive assisted living.~~

~~"Auxiliary Grants Program" means a state and locally funded assistance program to supplement the income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income and who resides in a licensed adult care residence.~~

~~"Case management agency" means a public human service agency having a contract with DMAS to provide case management services to any adult care residence recipient who meets the criteria set forth in Attachment 3-1, Supplement 2 of the State Plan for Medical Assistance (12VAC30-50-470) and which employs or contracts for case management.~~

~~"Case manager" means an employee of a public human service agency who is qualified and designated to authorize service in an adult care residence and to perform case management functions, such as the development, implementation, coordination and monitoring of plans of care and completion of the annual reassessment.~~

~~"DMAS" or "department" means the Department of Medical Assistance Services.~~

~~"DSS" means the Department of Social Services.~~

~~"General relief" means money payments and other forms of relief made to eligible persons as established by the local department of social services board in accordance with the rules and regulations of the State Board of Social Services. For purposes of this part, these recipients must reside in a public home for adults in Waynesboro and Manassas.~~

~~"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.~~

~~"Individualized service plan" means the written description of actions to be taken by the assisted living facility to meet the assessed needs of the resident. "Intensive assisted living services" means services provided under the Social Security Act, § 1915(e) waiver program, to persons who have dependencies in at least four ADLs, or who have a combination of dependencies in two or more ADLs and are rated as semi-dependent or dependent in a combination of behavior and orientation.~~

~~"Licensed health care professional" means a health care professional as defined by § 32.1-162.7 of the Code of Virginia.~~

~~"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument. Included in this level of service are recipients who are dependent in behavior pattern (i.e., the recipient exhibits acts detrimental to the life, comfort, safety or property of the recipient or others).~~

~~"Qualified assessor" means an entity contracting with DMAS to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home-based and community-based waiver program, including an independent physician contracting with DMAS to complete the uniform assessment instrument for applicants to adult care residences, or any hospital which has contracted with DMAS to perform nursing facility preadmission screenings.~~

Qualified assessors may only perform the initial assessment or assessments for changes in level of care. Qualified assessors will not have a contract with DMAS to provide case management services for adult care residence recipients which includes the annual reassessment.

"Regular assisted living services" means a level of services provided by licensed adult care residences to persons who have dependencies in two ADLs or behavior but who do not meet the criteria for intensive assisted living.

"Uniform assessment instrument (UAI)" means the department designated assessment form.

**12VAC30-120-460. General coverage and requirements for assisted living services. (Repealed.)**

A. Service populations. Two levels of assisted living, regular and intensive assisted living, shall be available to individuals eligible for an auxiliary grant who require assistance in activities of daily living and instrumental activities of daily living, which are above the room, board, and supervision provided by the adult care residence as reimbursed by an auxiliary grant program. Regular assisted living only shall be available to individuals eligible for general relief payments residing in public homes for adults in Waynesboro and Manassas and who meet the program criteria. The individual shall be classified into one of these two levels by the assessor responsible for completing the UAI and authorization of admissions to the adult care residence.

Coverage shall be provided under a state funded program for individuals who have been determined to require regular assisted living services.

Coverage shall be provided under a waiver of § 1915(e) of the Social Security Act for individuals who have been determined to require intensive assisted living services. This coverage is not available to general relief recipients.

B. Covered services. DMAS shall pay the facility a per diem fee for each recipient authorized to receive assisted living services, based on whether the recipient is authorized for regular or intensive assisted living. Payment of the per diem fee is limited to the days in which the recipient is physically present in the facility.

The facility shall employ or contract with staff who will provide hands on assistance or supervision with ADLs and IADLs to recipients according to the individual service plan. This plan shall be developed by the facility in accordance with the current needs of the recipient and as specified in 22VAC40 71 170 of the Standards and Regulations for Licensed Adult Care Residences.

The facility shall retain a licensed health care professional as specified in 22VAC40 71 630 J of the Standards and Regulations for Licensed Adult Care Residences except that the records maintained by the facility shall document that the care needs for auxiliary grant recipients authorized to receive intensive assisted living services have been reviewed during an onsite visit at least monthly by a licensed health care

professional. The licensed health care professional shall, as appropriate, participate in the development and monitoring of an individualized service plan to meet the resident's service needs.

C. Eligibility requirements. Individuals authorized to receive optional state supplement (auxiliary grant) payments and who meet the criteria for regular or intensive assisted living shall be eligible.

Individuals authorized to receive optional general relief payments, who meet the criteria for regular assisted living, and who reside in public homes for adults in Waynesboro and Manassas shall be eligible.

The department's payment for either regular or intensive assisted living services shall not be reduced by any payment from the individual's income.

The requirements related to spousal income and resource allowances found in § 1924 of the Social Security Act do not apply to those individuals receiving intensive assisted living services under a waiver of § 1915(e) of the Social Security Act.

D. Assessment and authorization of regular or intensive assisted living services.

1. The assessor shall evaluate the individual's functional and medical needs and authorize services to meet those needs pursuant to this part.

2. The assessment shall be completed using the UAI, and authorization for care shall be made based on the following criteria:

a. Regular assisted living. The individual must be dependent in two ADLs or dependent in behavior. The rating of functional dependencies shall be as specified in 22VAC40 745 70 of the Assessment in Adult Care Residences regulations.

b. Intensive assisted living. The individual must be determined to be at risk of nursing facility placement in the absence of home based and community based waiver services such as those provided in an assisted living facility and the individual's functional capacity is described by one of the following. The rating of functional dependencies shall be as specified in 12VAC30 60 300 of the State Plan for Medical Assistance (§ 1.1 of Supplement 1 to Attachment 3.1 C:)

- (1) Dependent in four or more ADLs;
- (2) Dependent in two or more ADLs and has dependencies or semidependencies in a combination of behavior and orientation; or
- (3) Semidependent in two or more ADLs and has dependencies in a combination of behavior and orientation.

3. Payment for regular and intensive assisted living services shall only be available for recipients residing in a

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licensed assisted living facility which has a valid DMAS provider agreement.

4. The assessor shall notify DSS eligibility personnel, upon completion of the UAI, that the recipient has been authorized for regular or intensive assisted living services and shall forward the UAI and authorization forms to DMAS, the facility chosen by the recipient and to the case manager, if case management services have been authorized.

5. The assessor shall give all recipients who have been denied assisted living services written notification that services have been denied and give the recipient the right to appeal the decision pursuant to DMAS Client Appeals Regulations (Part I of 12VAC30-110-10 et seq.). The assessor shall submit to DMAS the UAI, authorization form, and a copy of the notification showing denial of services before reimbursement for the assessment shall be made.

6. The assisted living facility shall forward a copy of the Long Term Care Preadmission Screening Authorization form, completed by the assessor, and the individualized service plan, completed by the facility, to DMAS for authorization to bill DMAS for regular assisted or intensive assisted living services.

7. A recipient may not receive regular or intensive assisted living services concurrently with any other Medicaid-funded in-home or residential support waiver services authorized under § 1915(c) of the Social Security Act.

8. All authorizations and individualized service plans for assisted living services shall be subject to the approval of DMAS prior to Medicaid payment.

## E. Effective date for assisted living payments.

1. DMAS shall pay the facility for services rendered while the recipient is both (i) determined, in accordance with regulations promulgated by DSS, to be eligible for benefits under the auxiliary grants or general relief program and (ii) authorized for a level of assisted living.

2. The assisted living authorization shall be considered effective as of the date the authorization form is signed and dated, except in the following situations:

a. In the case of an emergency placement as defined in regulations promulgated by DSS, the assisted living authorization shall be considered effective as of the date of the emergency placement, provided that the authorization form is signed and dated within seven working days after the date of the emergency placement.

b. In the case of recipients residing in a facility on February 1, 1996, and requiring an initial assessment, the assisted living authorization shall be considered effective, as follows: (i) August 1, 1996, provided that the authorization form is signed and dated on or before August 1, 1996; or (ii) as of whichever date on or after August 1, 1996, can be documented as being the date the

recipient required a level of assisted living provided that the authorization form is signed and dated on or before February 1, 1997.

3. In addition to the requirements of subdivisions 1 and 2 of this subsection, in order for assisted living payments to be made to a facility, the assisted living authorization shall be based on a UAI which complies with the requirements of § 63.1-173.3 of the Code of Virginia.

## 12VAC30-120-470. Conditions and requirements for participating assisted living facilities. (Repealed.)

A. General requirements. Facilities approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any changes in the level of care authorized and the individualized service plan which the facility previously submitted to DMAS.

2. Ensure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other facility qualified to perform the service or services required and participating in the Medicaid program at the time the service or services are performed.

3. Ensure the recipient's freedom to reject medical care and treatment.

4. Accept referrals for services only when staff is available to deliver the required services.

5. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

6. Charge DMAS for the provision of services to recipients in amounts not to exceed the facility's usual and customary charges to the general public.

7. Accept DMAS payment from the first day of the recipient's eligibility.

8. Accept as payment in full the amount established by DMAS.

9. Use program designated billing forms for submission of charges.

10. Record maintenance and retention requirements.

a. The facility agrees to maintain and keep adequate and verifiable information and records as is necessary to:

(1) Identify and disclose the extent of services, as identified on the uniform assessment instrument, the facility furnishes to recipients;

(2) Comply with the disclosure requirements of Subpart B of 42 CFR Part 455;

(3) Assure proper payment by the DMAS;

(4) Receive payments under the Medicaid program;

(5) Satisfy or secure overpayments, or both, made under the Medicaid program; and

~~(6) Survive any termination of the provider participation agreement.~~

~~b. The facility agrees to furnish the information required to be maintained to the DMAS, the Attorney General of Virginia or his authorized representatives, or the state Medicaid Fraud Control Unit on request and in the form requested. This right of access to facilities and records shall survive any termination of this agreement.~~

~~c. Records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every adjustment, retraction, exception and appeal is resolved.~~

~~d. In the event a facility discontinues operation, DMAS shall be notified in writing of the location and procedures for obtaining stored records for review. The location, agent, or trustee shall be within the Commonwealth of Virginia.~~

~~11. Disclose all financial, beneficial, ownership, equity, surety, or other interests it has in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to Medicaid recipients.~~

~~12. Hold confidential and use only for authorized DMAS purposes all medical and identifying information regarding recipients served.~~

~~13. When ownership of the facility changes, DMAS shall be notified within 15 calendar days of such change. A new DMAS provider agreement shall be required.~~

~~B. Requests for participation. Requests for participation must be accompanied with verification of the facility's current licensure from DSS.~~

~~C. Facility participation standards. DMAS will contract only with adult care residences licensed to provide assisted living services.~~

~~D. Adherence to facility contract and special participation conditions. All adult care residences contracting with DMAS must be in compliance with the DSS licensure requirements for assisted living facilities (22VAC40-71-10 et seq.).~~

~~E. Choice of facilities. Recipients eligible for intensive assisted living services shall be informed at the time of the assessment of all available assisted living facilities in the community and shall have the option of selecting the facility.~~

~~F. Appeals of adverse actions:~~

~~1. A facility shall have the right to appeal adverse action taken against it by DMAS. Adverse action includes, but is not limited to, termination of the provider agreement by DMAS, and retraction of payments from the facility by DMAS for noncompliance with applicable law, regulation, policy or procedure.~~

~~2. A facility shall not have the right to appeal to DMAS the following:~~

~~a. The criteria for regular assisted living services or for intensive assisted living services;~~

~~b. The assignment or nonassignment of a recipient to a particular level of assisted living; or~~

~~c. The methodology for calculating the per diem fee paid for regular or intensive assisted living services.~~

~~3. Appeals procedure. The administrative appeals procedure shall consist of the following three phases:~~

~~a. A reconsideration of the preliminary findings and a written response to the facility by the DMAS division which made the preliminary findings;~~

~~b. An informal fact finding conference held in accordance with the Administrative Process Act with a written decision issued by the Appeals Division; and~~

~~c. A formal evidentiary hearing held in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) with a written decision issued by the DMAS Director.~~

~~4. Time frames to request appeals. The facility shall have 15 days from the date of service of the notification of adverse action to request a reconsideration, 30 days from the date of service of the written reconsideration to request an informal fact finding conference, and 30 days from the date of service of the written informal fact finding conference decision to request a formal evidentiary hearing. The date of service shall be deemed to be the earlier to occur of the date the notification, reconsideration or decision (i) was mailed to the facility, or (ii) was received by the facility. In the event the notification, reconsideration or decision being appealed was served on the facility by mail, three days shall be added to the applicable 15 day or 30 day period.~~

~~G. Responsibility for sharing information. It shall be the facility's responsibility to notify the case manager, DMAS, and DSS in writing within 30 days, or within the time frame of applicable DSS regulations, whichever is shorter, of the occurrence of any of the following circumstances:~~

~~1. There is a change in the recipient's functional or cognitive ability which would require a change in the authorized level of care. Temporary changes in a recipient's condition that can be reasonably expected to last less than 30 days do not require a new assessment, authorization, or notification;~~

~~2. A recipient dies;~~

~~3. A recipient is discharged from the facility; or~~

~~4. Other circumstances arise (including hospitalizations) which cause services to cease or be interrupted for more than 30 days.~~

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H. Changes or termination of care. It shall be the assessor's responsibility to authorize changes to a recipient's level of care or to terminate payment for services.

1. The assessor shall communicate in writing to the facility and the recipient any change in level of care or any termination of services. The recipient shall be notified of the right to request a reconsideration by DMAS of any decision that changes the level of care authorized or terminates regular assisted living or intensive assisted living services.

2. If a reconsideration is requested by the recipient, DMAS will review the assessor's recommendation and respond to the individual in writing within 10 days of receipt of the request. If the assessor's decision is upheld, DMAS shall give the recipient the right to appeal the decision pursuant to DMAS' Client Appeals Regulations (Part I of 12VAC30-110-10 et seq.).

3. The effective date of a termination or change in level of services shall be at least 10 days from the date of the notification letter.

I. Suspected abuse or neglect. Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating facility, qualified assessor, or case management agency knows or suspects, or has reason to suspect, that a recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS' adult protective services of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred.

J. Monitoring of adherence to facility participation standards. The Department of Social Services' Division of Licensing shall be responsible for monitoring each assisted living facility's adherence to licensure standards which provide the basis for DMAS provider participation standards. In addition, DMAS shall periodically conduct audits of the services billed to DMAS and interview recipients to ensure that services are being provided and billed in accordance with DMAS policies and procedures. A facility's noncompliance with DMAS policies and procedures shall result in a written request from DMAS for a corrective action plan which details the steps the facility must take and the length of time permitted to achieve full compliance with DMAS regulations, policies and procedures.

## **12VAC30-120-480. Reevaluation of service need and utilization review. (Repealed.)**

A. The case manager shall be responsible for review of each regular assisted living or intensive assisted living recipient's need for services at least every 12 months, or more frequently as required, to ensure proper utilization of services. The outcome of this review shall be communicated to the DSS eligibility staff, DMAS, the recipient, and the facility where the resident resides.

B. The assisted living facility shall be required to maintain the following documentation for review by the case manager and DMAS staff for each regular assisted living or intensive assisted living resident:

1. All UAIs, authorization forms, and individualized service plans completed for the recipient maintained for a period not less than five years from the recipient's start of care in that facility.

2. All written communication related to the provision of care between the facility and the assessor, case manager, licensed health care professional, DMAS, DSS, the recipient, or other related parties.

3. A log which documents each day that the recipient is present in the facility.

VA.R. Doc. No. R13-2781; Filed July 15, 2013; 5:12 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Fast-Track Regulation

Title of Regulation: 18VAC60-20. Regulations Governing Dental Practice (amending 18VAC60-20-50).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 11, 2013.

Effective Date: September 26, 2013.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system, and § 54.1-2729 of the Code of Virginia stipulates that the board shall promulgate regulations requiring continuing education for dental hygienist license renewal or reinstatement.

Purpose: The purpose of the amended regulation is to expand the listing of approved continuing education providers to include the American Academy of Dental Hygiene (Academy) in order to give licensees more options for meeting continuing education requirements for license renewal. The Academy has developed standards for continuing education courses that are evaluated for content, depth, accuracy, and outcome. Courses must relate to current dental hygiene practice and patient care and are intended to enhance the licensee's knowledge, skills, and competence in the provision of safe, effective services to patients.

**Rationale for Using Fast-Track Process:** The amendment is in response to a petition for rulemaking; there was no comment on the petition, and the amendment was recommended by dental hygienists on the board and by the professional association representatives. It is not expected to be controversial.

**Substance:** 18VAC60-20-50 is amended to add the American Academy of Dental Hygiene to the listing of organizations and entities that can approve continuing education courses for dentists and dental hygienists in Virginia.

**Issues:** There are no advantages or disadvantages to the public. The public continues to benefit from continuing education that is appropriately evaluated for content and outcome. There are no advantages or disadvantages to the agency or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

**Summary of the Proposed Amendments to Regulation.** The Board of Dentistry (Board) proposes to add the American Academy of Dental Hygiene and its constituent and component/branch associations to the listing of organizations and entities that can approve continuing education courses for dentists and dental hygienists in Virginia.

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

**Estimated Economic Impact.** Dentists and dental hygienists are required to complete a minimum of 15 hours of approved continuing education for each annual renewal of licensure. These regulations provide a list of approved continuing education sponsors. The Board proposes to add the American Academy of Dental Hygiene and its constituent and component/branch associations (Academy) to the list.

Adding the Academy to the list of approved sponsors will give dental hygienists additional options for meeting their continuing education requirement for renewal. The additional options may provide some cost savings, be more convenient, or be more applicable for the needs of some licensees. Thus the additional option should produce a benefit. The Department of Health Professions has determined that the Academy has developed standards for continuing education courses, which are evaluated for content, depth, accuracy and outcome. Courses must relate to current dental hygiene practice and patient care and are intended to enhance the licensees knowledge, skills and competence in the provision of safe, effective services to patients. Thus, the additional approved courses should be of sufficient quality to help ensure the competence of the licensees. Given the potential cost savings, increased convenience, increased applicability, and assurance of quality, the proposed amendment should provide a net benefit.

**Businesses and Entities Affected.** The proposed amendment potentially affects the 5403 dental hygienists currently

licensed in Virginia, as well as the 3049 dental offices in the Commonwealth.

**Localities Particularly Affected.** The proposed amendment does not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed amendment is unlikely to significantly affect employment.

**Effects on the Use and Value of Private Property.** The proposed amendment may result in some dental hygienists taking one or more courses from the Academy of Dental Hygiene or its constituent and component/branch associations rather than from other sponsors currently listed as approved in these regulations.

**Small Businesses: Costs and Other Effects.** If dental practices reimburse their dental hygienists for their continuing education courses, the proposed amendment may produce some small cost savings for these practices.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendment is unlikely to provide a net adverse impact on small businesses.

**Real Estate Development Costs.** The proposed amendments are unlikely to significantly 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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18VAC60-20, Regulations Governing Dental Practice, relating to the

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addition of the American Academy of Dental Hygiene to the list of approved continuing education providers.

**Summary:**

*The amendment to 18VAC60-20-50 adds the American Academy of Dental Hygiene to the listing of organizations and entities that can approve continuing education courses for dentists and dental hygienists in Virginia.*

**18VAC60-20-50. Requirements for continuing education.**

A. A dentist or a dental hygienist shall be required to have completed a minimum of 15 hours of approved continuing education for each annual renewal of licensure. A dental assistant II shall be required to maintain current certification from the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association.

1. A dentist, a dental hygienist, or a dental assistant II shall be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.
2. A dentist who administers or a dental hygienist who monitors patients under general anesthesia, deep sedation or conscious sedation shall complete four hours every two years of approved continuing education directly related to administration or monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.
3. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dental practice; or
2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in subdivision B 1 of this section and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;
2. American Dental Hygienists' Association and National Dental Hygienists Association, their constituent and component/branch associations;
3. American Dental Assisting Association, its constituent and component/branch associations;

4. American Dental Association specialty organizations, their constituent and component/branch associations;

5. American Medical Association and National Medical Association, their specialty organizations, constituent, and component/branch associations;

6. Academy of General Dentistry, its constituent and component/branch associations;

7. American Academy of Dental Hygiene, its constituent and component/branch associations;

~~7.~~ 8. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

~~8.~~ 9. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Health Care Organizations;

~~9.~~ 10. The American Heart Association, the American Red Cross, the American Safety and Health Institute and the American Cancer Society;

~~10.~~ 11. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

~~11.~~ 12. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

~~12.~~ 13. The Commonwealth Dental Hygienists' Society;

~~13.~~ 14. The MCV Orthodontic and Research Foundation;

~~14.~~ 15. The Dental Assisting National Board; or

~~15.~~ 16. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, or Western Regional Examining Board) when serving as an examiner.

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. A dental assistant II is required to attest to current certification by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association. Following the renewal period, the board may conduct an audit of licensees or registrants to verify compliance. Licensees or registrants selected for audit must provide original documents



certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees or registrants are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement. A dental assistant II who has allowed his registration to lapse or who has had his registration suspended or revoked must submit evidence of current certification from a credentialing organization recognized by the American Dental Association to reinstate his registration.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license or registration renewal or reinstatement.

J. Failure to comply with continuing education requirements or current certification requirements may subject the licensee or registrant to disciplinary action by the board.

V.A.R. Doc. Nos. R13-13 and R13-3623; Filed July 19, 2013, 12:22 p.m.

**BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**Fast-Track Regulation**

**Title of Regulation:** 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-170, 18VAC65-20-171, 18VAC65-20-400, 18VAC65-20-435, 18VAC65-20-436, 18VAC65-20-580).

**Statutory Authority:** §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

**Basis:** 18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers, are promulgated by the Board of Funeral Directors and Embalmers 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 that are

reasonable and necessary for the administration of a regulatory program. Sections 54.1-2803 and 54.1-2804 of the Code of Virginia authorize the board to establish standards of service and practice and to determine the qualifications to enable any person to engage in the practice of funeral service, preneed funeral planning, funeral directing, embalming, and the operation of a funeral service establishment.

**Purpose:** This action is in response to a periodic review of regulations. The overall purpose of the amended regulation is clarification and ease of compliance with requirements for funeral establishments. Less restrictive regulations for establishment applicants, managers of record, and embalming equipment will result in a modest decrease in the regulatory burden without any associated risk of harm to the public. The board will continue to have the ability to monitor compliance and enforce regulations that protect the public health and safety in the handling and disposition of human remains.

**Rationale for Using Fast-Track Process:** The fast-track process is being used because the changes are mostly less restrictive and clarifying. There should be no controversy from these periodic review recommendations.

**Substance:** Amendments will (i) require less time for submission of an application for a new establishment prior to the establishment opening for business; (ii) eliminate the specific 40-hour a week requirement for a manager of record to be employed by an establishment; (iii) clarify a requirement for compliance with OSHA standards; and (iv) allow a first aid kit to be kept either in a preparation room or immediately accessible to the room.

**Issues:** There are no real advantages or disadvantages to the public. Clarification of rules or a modest reduction in regulatory requirements will benefit licensees, but there is not likely to be a perceptible advantage to the consumer. 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. The proposed changes will 1) eliminate the specific 40-hour a week requirement for a manager of record to be employed by a funeral establishment, 2) reduce the required advance notification time for submission of an application for a new establishment prior to opening, 3) allow a first-aid kit to be kept in a preparation room, and 4) clarify the requirements for compliance with certain federal health and safety standards.

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

**Estimated Economic Impact.** One of the proposed changes will eliminate the specific 40-hour a week requirement for a manager of record to be employed by a funeral establishment. According to the Department of Health Professions (DHP)

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the intent of the requirement for a full-time manager of record is to ensure that there is a person responsible to the Board of Funeral Directors and Embalmers (Board) for operation of the establishment at all times. Currently, regulations specify that full-time must be 40 hours per week. The proposed regulation would require that the manager must be employed full-time without specifying a number of hours. If a manager can be fully in charge and employed full time for a fewer number of hours per week, that would satisfy the proposed regulations. This change will allow more flexibility to the funeral establishments and their employees serving as the manager of record in determining the terms of their labor contract.

Another proposed change will reduce the required advance notification time for submission of an application for a new establishment prior to opening. Currently, a completed application must be on file at least 45 days prior to opening an establishment to allow for scheduling and completing an inspection of the location by DHP. The proposed change will reduce the required advance notification from 45 days to 30 days. With this change, an applicant will have 15 additional days to have all of the required elements in place prior to an opening inspection. DHP does not anticipate any significant administrative difficulties due to shorter notifications.

The proposed changes will also allow a first-aid kit to be kept in a preparation room. Currently, a first-aid kit must be immediately accessible to the preparation room. According to DHP, the kit may be more useful if maintained in the preparation room. Thus, the proposed change will give an establishment an additional option to place a first aid kit. While this change provides additional flexibility to the establishments in conducting their operations, no significant economic impact is expected.

Finally, the proposed changes will clarify the requirements for compliance with federal Occupational Safety and Health Administration standards. No significant effect, other than improving the clarity of these regulations, is expected from this change.

**Businesses and Entities Affected.** These regulations apply to 1,439 funeral service providers, 426 funeral service establishments, 62 branch funeral establishments, 43 surface transportation and removal service providers, and 97 crematories.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** The proposed changes are not expected to have a significant direct impact on employment.

**Effects on the Use and Value of Private Property.** No significant effect on the use and value of private property is expected.

**Small Businesses: Costs and Other Effects.** According to DHP, while many of the affected establishments are small businesses, some are owned by large, national corporations.

The economic effects discussed above apply to small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed changes do not impose any adverse impact on small businesses.

**Real Estate Development Costs.** No effect on real estate development costs is expected.

**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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers.

**Summary:**

*The amendments are a result of a periodic review of 18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers, and are clarifying in nature or intended to make the requirements somewhat less restrictive. Amendments (i) require less time for submission of an application for a new establishment prior to opening for business; (ii) eliminate the specific 40-hour per week requirement for a manager of record to be employed by an establishment; (iii) clarify the requirement for compliance with federal Occupational Safety and Health Administration standards; and (iv) allow a first aid kit to be kept either in a preparation room or immediately accessible to the room.*

Part III  
Requirements for Licensure

**18VAC65-20-170. Requirements for an establishment license.**

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

B. Except as provided in § 54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate manager of record who has responsibility for the establishment as prescribed in 18VAC65-20-171. The owner of the establishment shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

C. At least ~~45~~ 30 days prior to opening an establishment, an owner or licensed manager seeking an establishment license shall submit simultaneously a completed application, any additional documentation as may be required by the board to determine eligibility, and the applicable fee. An incomplete package will be returned to the licensee. A license shall not be issued until an inspection of the establishment has been completed and approved.

D. Within 30 days following a change of ownership, the owner or licensed manager shall request a reinspection of the establishment, submit an application for a new establishment license with documentation that identifies the new owner, and pay the licensure and reinspection fees as required by 18VAC65-20-70. Reinspection of the establishment may occur on a schedule determined by the board, but shall occur no later than one year from the date of the change.

E. The application for licensure of a branch or chapel shall specify the name of the main establishment.

**18VAC65-20-171. Responsibilities of the manager of record.**

A. ~~The Every funeral establishment shall have a manager of record shall be who is employed full time by and in charge of the establishment for at least 40 hours a week.~~

B. The manager shall be fully accountable for the operation of the establishment as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;
2. Retention of reports and documents as prescribed by the board in 18VAC65-20-700 during the period in which he serves as manager of record; and

3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

Part IV  
Registration

**18VAC65-20-400. Registration of surface transportation and removal services.**

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

1. A completed and signed application;
2. The fee prescribed in 18VAC65-20-70 A 3; and
3. Additional documentation as may be required by the board to determine eligibility of the applicant, including, but not limited to, evidence of training in ~~the requirements~~ compliance with standards of the Occupational Safety and Health Administration (OSHA) for universal precautions and blood-borne pathogens.

**18VAC65-20-435. Registration of crematories.**

A. At least 30 days prior to opening a crematory, any person intending to own or operate a crematory shall apply for registration with the board by submitting a completed application and fee as prescribed in 18VAC65-20-70. The name of the individual designated by the ownership to be the crematory manager shall be included on the application. The owner of the crematory shall not abridge the authority of the crematory manager relating to compliance with the laws governing the practice of funeral services and regulations of the board.

B. Every crematory, regardless of how owned, shall have a manager who has (i) achieved certification by the Cremation Association of North America (CANAm); the International Cemetery, Cremation and Funeral Association (ICCFAm); or other certification recognized by the board and (ii) received training in compliance with ~~requirements~~ standards of the Occupational Health and Safety Administration (OSHA) for universal precautions and blood-borne pathogens. ~~Every crematory manager registered by the board prior to July 8, 2009, shall have one year from that date to obtain such certification.~~

C. The manager shall be fully accountable for the operation of the crematory as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;
2. Retention of reports and documents as prescribed by the board in 18VAC65-20-436 during the period in which he serves as crematory manager; and
3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

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D. All persons who operate the retort in a crematory shall have certification by the Cremation Association of North America (CANA); the International Cemetery, Cremation and Funeral Association (ICCFA); or other certification recognized by the board. ~~Every operator in a crematory registered by the board prior to July 8, 2009, shall have one year from that date to obtain such certification.~~ Persons receiving training toward certification to operate a retort shall be allowed to work under the supervision of an operator who holds certification for a period not to exceed six months.

E. A crematory providing cremation services directly to the public shall also be licensed as a funeral service establishment or shall be a branch of a licensed establishment.

F. The board may take disciplinary action against a crematory registration for a violation of § 54.1-2818.1 of the Code of Virginia or for the inappropriate handling of dead human bodies or cremains.

**18VAC65-20-436. Standards for registered crematories or funeral establishments ~~that operate a crematory~~ relating to cremation.**

A. Authorization to cremate.

1. In accordance with § 54.1-2818.1 of the Code of Virginia, a crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature of the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825 of the Code of Virginia; an agent named in an advance directive pursuant to § 54.1-2984; or a sheriff, upon court order, if no next-of-kin, designated person, or agent is available.

2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

3. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased as a prerequisite for cremation pursuant to § 54.1-2818.1 of the Code of Virginia.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).

2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.

3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort,

unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.

4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.

5. Whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, the crematory shall maintain the remains in refrigeration at approximately 40° Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

- a. Be composed of readily combustible materials suitable for cremation;
- b. Be able to be closed in order to provide complete covering for the human remains;
- c. Be resistant to leakage or spillage; and
- d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin. If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the next-of-kin so authorized in writing.

3. The identification of the decedent shall be physically attached to the remains and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form

on which the next-of-kin or the person authorized by § 54.1-2818.1 of the Code of Virginia to make the identification has made a visual identification of the deceased or evidence of positive identification if visual identification is not feasible;

2. The permission form from the medical examiner;
3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and
4. The form verifying the release of the cremains, including date and time of release, the name of the person and the entity to whom the cremains were released and the name of the decedent.

**18VAC65-20-580. Preparation room equipment.**

The preparation room or rooms shall be equipped with:

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

VA.R. Doc. No. R13-3539; Filed July 22, 2013, 9:57 a.m.

**Fast-Track Regulation**

**Title of Regulation:** 18VAC65-30. Regulations for Preneed Funeral Planning (amending 18VAC65-30-70).

**Statutory Authority:** §§ 54.1-2400, 54.1-2803, and 54.1-2820 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone

(804) 367-4424, FAX (804) 527-4637, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia provides the general powers and duties of Board of Funeral Directors and Embalmers, including to promulgate regulations; and §§ 54.1-2803 and 54.1-2804 of the Code of Virginia authorize the board to regulate preneed funeral planning services and to determine the qualifications to enable any person to engage in the practice of preneed funeral planning.

**Purpose:** This action is in response to a periodic review of regulations. The overall purpose of the amended regulation is clarification and ease of compliance with requirements for preneed funeral planning. Less restrictive regulation for recordkeeping will result in a modest decrease in the regulatory burden without any associated risk of harm to the public. The board will continue to have the ability to monitor compliance and to enforce regulations that protect the public health and safety in preneed contracts.

**Rationale for Using Fast-Track Process:** The fast-track process is being used because the amendment to the regulation results in a less restrictive regulation. There should be no controversy from this periodic review recommendation.

**Substance:** Amendments will allow a contract provider to maintain a chronological or an alphabetical listing of all preneed contracts.

**Issues:** There are no real advantages or disadvantages to the public. Clarification of rules or a modest reduction in regulatory requirements will benefit licensees, but there is not likely to be a perceptible advantage to the consumer. 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. The proposed changes will allow funeral service providers to maintain preneed contracts in an alphabetical order.

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

Estimated Economic Impact. The proposed changes will allow funeral service providers to maintain preneed contracts in an alphabetical order. Current regulations require providers to maintain a chronological listing of all preneed contracts. According to the Department of Health Professions (DHP), chronological listing is required primarily for ease of inspection to check compliance with the requirements for preneed funeral planning. However, DHP reports that some providers prefer to maintain their preneed contracts in an alphabetical rather than a chronological order due to ease of access.

This change will accommodate the preferences of providers who wish to maintain their contracts in an alphabetical order.

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The proposed less restrictive record keeping requirement should benefit some providers while complicating an inspectors verification of compliance by a small margin. However, neither the benefits nor the costs are likely to be significant.

**Businesses and Entities Affected.** The proposed regulations primarily apply to funeral service establishments. There are 426 licensed establishments in Virginia. DHP believes that most of the establishments offer preneed funeral services.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** No significant impact on employment is expected.

**Effects on the Use and Value of Private Property.** No significant effect on the use and value of private property is expected.

**Small Businesses: Costs and Other Effects.** Many of the funeral establishments are believed to be small businesses. As discussed above, the proposed less restrictive record keeping requirement should benefit some of them.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed regulations do not impose an adverse impact on small businesses.

**Real Estate Development Costs.** No effect on real estate development costs is expected.

**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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC65-30, Regulations for Preneed Funeral Planning.

**Summary:**

*The amendments are recommended as a result of a periodic review of 18VAC65-30, Regulations for Preneed Funeral Planning. Amendments allow a contract provider to maintain a chronological or an alphabetical listing of all preneed contracts.*

**18VAC65-30-70. Record reporting.**

A. A contract provider shall keep a chronological or an alphabetical listing of all preneed contracts. The listing shall include the following:

1. Name of contract buyer;
2. Name of contract beneficiary;
3. Date of contract;
4. How contract was funded;
5. Whether up to 10% of funds are retained by the contract provider for contracts funded through trust; and
6. Whether funeral goods and supplies are stored for the contract buyer.

B. A contract provider who discontinues its business operations shall notify the board and each existing contract buyer in writing.

VA.R. Doc. No. R13-3666; Filed July 19, 2013, 11:38 a.m.

**Fast-Track Regulation**

**Title of Regulation:** 18VAC65-40. Regulations for the Funeral Service Internship Program (amending 18VAC65-40-10, 18VAC65-40-90, 18VAC65-40-220, 18VAC65-40-250, 18VAC65-40-320).

**Statutory Authority:** §§ 54.1-2400 and 54.1-2817 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@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 in accordance with the Administrative Process Act that are reasonable and necessary for the administration of a regulatory program, and § 54.1-2803 of the Code of Virginia establishes the specific powers and duties of the Board of

Funeral Directors and Embalmers, including establishing, supervising, regulating, and controlling programs for funeral service interns.

Purpose: This action is in response to a periodic review of regulations. The overall purpose of the amended regulation is ease of compliance with requirements for funeral internship programs. Less restrictive regulations for training in embalming and for filing reports with the board will result in a modest decrease in the regulatory burden without any associated risk of harm to the public. The board will continue to have the ability to monitor compliance and enforce regulations that protect the public health and safety in training of interns for funeral licensure.

Rationale for Using Fast-Track Process: The fast-track process is being used because the changes are less restrictive and clarifying. There should be no controversy from these periodic review recommendations.

Substance: The amendments (i) allow the board to approve an internship in embalming in a government facility or accredited educational institution and (ii) change reporting requirements for interns from 10 days to 14 days.

Issues: There are no real advantages or disadvantages to the public. A modest reduction in regulatory requirements will benefit licensees, but there is not likely to be a perceptible advantage to the consumer. 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. The proposed changes will expand the qualified training sites for internship in embalming and allow additional time to report certain changes to the Board of Funeral Directors and Embalmers (Board).

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

Estimated Economic Impact. The proposed changes will expand the qualified training sites for internship in embalming to include a government facility or an accredited educational institution. Under the current regulations, all approved training in an internship program must occur within a licensed funeral establishment. However, according to the Department of Health Professions (DHP), it has been increasingly difficult to obtain adequate training in embalming because more people are choosing cremation. DHP believes that interns can receive excellent training in embalming at the state anatomical program or at an educational institution, such as John Tyler Community College, that has a funeral services curriculum. Additionally, the proposed amendment will allow the Board to approve embalming training obtained in the military through mortuary

affairs as partial completion of an internship program by veterans. Expanding the pool of eligible internship programs to include a government facility or an accredited educational institution is likely to make it easier for the potential interns to find an appropriate training site without increasing the risk of harm to the public.

The proposed changes will also allow additional time to report certain changes to the Board. Currently, regulations require the intern to notify the Board of any changes in name, address, employment or supervisor. There is no timeframe given for the notification, so it is presumed to be immediate notification. The proposed change would specify notification within 14 days, which is consistent with other requirements for notification for funeral service providers. In addition, the proposed changes will increase the time frame from 10 to 14 days for both the report that is due to the Board at the end of every 1,000 hours of internship and the partial internship report that must be filed if the internship is disrupted. Additional time to file notifications and reports is expected to benefit interns and establishments.

**Businesses and Entities Affected.** The proposed regulations will primarily affect funeral service establishments and interns. Currently, there are 426 funeral service establishments and 141 interns.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** The expansion of qualified training sites for internship is expected to make it easier for interns to find a placement which in turn has the potential to increase the supply of licensed funeral service providers.

**Effects on the Use and Value of Private Property.** The proposed regulations are not expected to have a significant impact on the use and value of private property.

**Small Businesses: Costs and Other Effects.** While many of the 426 funeral establishments are believed to be small businesses, some are owned by large, national corporations. The effects discussed above apply to small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed changes do not impose any adverse impact on small businesses.

**Real Estate Development Costs.** No impact on real estate development costs is expected.

**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, a determination of the public benefit, 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

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to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC65-40, Regulations for the Funeral Service Internship Program.

Summary:

*The amendments are a result of a periodic review of 18VAC65-40, Regulations for the Funeral Service Internship Program, and (i) allow the board to approve an internship in embalming in a government facility or accredited educational institution and (ii) change reporting requirements for interns from 10 days to 14 days.*

Part I  
General Provisions

**18VAC65-40-10. Definitions**

In addition to words and terms defined in § 54.1-2800 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:

"Direct supervision" means that a licensed funeral service professional is present and on the premises of the facility.

"Supervisor" means a licensed employee at the training site who has been approved by the board to provide supervision for the funeral intern.

"Training site" means the licensed funeral establishment ~~which, facility, or institution that~~ has agreed to serve as ~~the~~ a location for a funeral service internship and has been approved by the board.

**18VAC65-40-90. Renewal of registration.**

A. The funeral service intern registration shall expire on March 31 of each calendar year and may be renewed by submission of the renewal notice and prescribed fee.

B. A person who fails to renew a registration by the expiration date shall be deemed to have an invalid

registration. No credit will be allowed for an internship period served under an expired registration.

C. The funeral service intern is responsible for notifying the board within 14 days of any changes in name, address, employment, or supervisor. Any notices shall be validly given when mailed to the address on record with the board.

**18VAC65-40-220. Qualifications of training site.**

A. The board shall approve only an establishment or two combined establishments to serve as the training site or sites ~~which that~~:

1. Have a full and unrestricted Virginia license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. Have 50 or more funerals and 50 or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals or embalmings, the funeral service intern may seek approval for an additional training site.

B. The board may grant approval for a resident trainee to receive all or a portion of the embalming training at a facility of state or federal government or an accredited educational institution.

**18VAC65-40-250. Requirements for supervision.**

A. Training shall be conducted under the direct supervision of a licensee or licensees approved by the board. Credit shall only be allowed for training under direct supervision.

B. The board shall approve only funeral service licensees, licensed funeral directors, or licensed embalmers to give funeral training who have a full and unrestricted Virginia funeral license, have at least two consecutive years in practice and are employed full time in or under contract with the establishment, facility, or institution where training occurs.

C. A supervisor licensed as an embalmer or a funeral director shall provide supervision only in the areas of funeral practice for which he is licensed.

D. Failure to register as a supervisor may subject the licensee to disciplinary action by the board.

E. If a supervisor is unable or unwilling to continue providing supervision, the funeral service intern shall obtain a new supervisor. Credit for training shall resume when a new supervisor is approved by the board and the intern has paid the prescribed fee for the change of supervisor.

**18VAC65-40-320. Reports to the board.**

A. The intern, the supervisor or supervisors, and the establishment shall submit a written report to the board at the end of every 1,000 hours of training. The report shall:

1. Specify the period of time in which the 1,000 hours has been completed and verify that the intern has actually



served in the required capacity during the preceding period; and

2. Be received in the board office no later than ~~40~~ 14 days following the end of the completion of 1,000 hours. Late reports may result in additional time being added to the internship.

B. If the internship is terminated or interrupted prior to completion of 1,000 hours or if the intern is changing supervisors or training sites, the intern and the supervisor shall submit a partial report to the board with a written explanation of the cause of program termination or interruption or of the change in training or supervision.

1. The partial report shall provide the amount of time served and the dates since the last reporting period. Credit for partial reports shall be given for the number of hours of training completed.

2. Partial reports shall be received in the board office no later than ~~40~~ 14 days after the interruption or termination of the internship or after the change in supervisors or training sites. Credit may be deducted for late reports.

VA.R. Doc. No. R13-3667; Filed July 22, 2013, 9:57 a.m.

**BOARD OF MEDICINE**

**Fast-Track Regulation**

**Title of Regulation: 18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18VAC85-40-10, 18VAC85-40-40, 18VAC85-40-66).**

**Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.**

**Public Hearing Information: No public hearings are scheduled.**

**Public Comment Deadline: September 11, 2013.**

**Effective Date: September 26, 2013.**

**Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.**

**Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Section 54.1-2954.1 of the Code of Virginia provides specific authority for the board to regulate respiratory care practitioners.**

**Purpose: The proposed regulation eliminates a potential barrier to licensure for a candidate who may be otherwise qualified by providing a pathway to Virginia licensure for respiratory therapists who have been licensed in another state but who do not have the requisite hours of active practice to qualify under current regulations. By substitution of hours of continuing education, the board has some assurance of competency in the knowledge and skills of the therapists so the public health and safety is protected.**

**Rationale for Using Fast-Track Process: The regulatory amendment is a less restrictive regulation, which has been reviewed by members of the Advisory Board on Respiratory Care and unanimously approved by the Board of Medicine, and will not be controversial.**

**Substance: 18VAC85-40 is amended to allow an option for licensure of an applicant who has been licensed in another state but who does not have "active practice," defined as 160 hours of professional practice within the 24-month period immediately preceding application. The amendments allow an applicant to demonstrate competency through documentation of 20 hours of continuing education within the 24-month period.**

**Issues: The advantage to the public is the potential licensure of qualified therapists from other states to increase the availability of practitioners in Virginia. There are no disadvantages because there remains a requirement for continuing competency. There are no advantages or disadvantages to the agency or 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. The Board of Medicine (Board) proposes to allow an option for respiratory care practitioner licensure of an applicant who has been licensed in another state but who does not have active practice, defined as 160 hours of professional practice within the 24-month period immediately preceding application. The applicant would be allowed to demonstrate competency through documentation of 20 hours of continuing education within the 24-month period.

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

Estimated Economic Impact. The current regulations require individuals applying for Virginia licensure as a respiratory care practitioner, who are already licensed or certified in any other jurisdiction, to provide documentation of active practice as a respiratory care practitioner and verification that there has been no disciplinary action taken or pending in that jurisdiction. The regulations define active practice as a minimum of 160 hours of professional practice as a respiratory care practitioner within the 24-month period immediately preceding renewal or application for licensure if previously licensed or certified in another jurisdiction.

The purpose of the proposed amendment is to provide a pathway to Virginia licensure for respiratory therapists who have been licensed in another state but who do not have the requisite hours of active practice to qualify under current regulations. By substitution of hours of continuing education, the Board has some assurance of competency in the knowledge and skills of the therapists; so public health and

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safety is protected. The proposed regulation eliminates a potential barrier to licensure for a candidate who may be otherwise qualified, while ensuring competence. Thus the proposed amendment should provide a net benefit.

**Businesses and Entities Affected.** The proposed amendment affects individuals applying for Virginia licensure as a respiratory care practitioner who are already licensed or certified in another jurisdiction, but who do not have the requisite hours of active practice to qualify under the current regulations.

**Localities Particularly Affected.** The proposed amendment does not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed amendment is unlikely to significantly affect total employment. A small number of respiratory care practitioners who are licensed or certified in another jurisdiction, but who do not have the requisite hours of active practice to qualify for Virginia licensure under the current regulations, may find it easier to find employment in Virginia.

**Effects on the Use and Value of Private Property.** For the small number of respiratory care practitioners who are licensed or certified in another jurisdiction, but who do not have the requisite hours of active practice to qualify for Virginia licensure under the current regulations, the proposed amendment has the potential to increase their net worth in that they may find it easier to find employment in Virginia.

**Small Businesses: Costs and Other Effects.** The proposed amendment does not increase costs for small businesses. It has the potential to moderately decrease costs for some small firms that employ respiratory care practitioners in that the potential pool of viable candidates for respiratory care practitioner positions may moderately increase.

**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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Medicine concurs with the analysis of the Department of Planning and Budget for 18VAC85-40, Regulations Governing the Practice of Respiratory Care Practitioners, relating to regulatory reform changes.

Summary:

*Amendments to 18VAC85-40 allow an out-of-state applicant to demonstrate competency through documentation of 20 hours of continuing education within the 24-month period preceding application for licensure in lieu of documentation of "active practice," which is 160 hours of professional practice as a respiratory care practitioner, within the 24-month period preceding application for licensure.*

Part I

General Provisions

**18VAC85-40-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

Board

Qualified medical direction

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

"AARC" means the American Association for Respiratory Care.

"Accredited educational program" means a program accredited by the ~~Committee~~ Commission on Accreditation for Respiratory Care or any other agency approved by the NBRC for its entry level certification examination.

"Active practice" means a minimum of 160 hours of professional practice as a respiratory care practitioner within the 24-month period immediately preceding renewal or application for licensure if previously licensed or certified in another jurisdiction. The active practice of respiratory care may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board on Respiratory Care to the Board of Medicine as specified in § 54.1-2956 of the Code of Virginia.

"NBRC" means the National Board for Respiratory Care, Inc.

"Respiratory care practitioner" means a person as specified in § 54.1-2954 of the Code of Virginia.

Part II

Requirements for Licensure as a Respiratory Care Practitioner  
**18VAC85-40-40. Application Licensure requirements.**

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-40-35.
2. Verification of professional education in respiratory care as required in 18VAC85-40-45.
3. Verification of practice as required on the application form.
4. Evidence of passage of the national examination as required in 18VAC85-40-50.
5. If licensed or certified in any other jurisdiction, documentation of active practice as a respiratory care practitioner or documentation of 20 hours of continuing education within the 24-month period immediately preceding application and verification that there has been no disciplinary action taken or pending in that jurisdiction.

**18VAC85-40-66. Continuing education requirements.**

A. ~~On and after January 1, 2005, in~~ In order to renew an active license as a respiratory care practitioner, a licensee shall attest to having completed 20 hours of continuing education as approved and documented by a sponsor recognized by the AARC or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. 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.

G. 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.

VA.R. Doc. No. R13-3567; Filed July 12, 2013, 10:14 a.m.

**Fast-Track Regulation**

**Title of Regulation: 18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-10, 18VAC85-50-57, 18VAC85-50-115).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides general powers and duties of health regulatory boards, including the Board of Medicine; § 54.1-2952 of the Code of Virginia provides specific authority to the board to regulate physician assistants; and § 54.1-2952.1 of the Code of Virginia provides that the board promulgate regulations governing the prescriptive authority of physician assistants of certain controlled substances and devices.

**Purpose:** The purpose of the amendments is to update terminology and reduce the burden of notifying the board when there are changes in the employment or supervision of physician assistants. The amendments will not reduce the responsibility of assistants or physicians to their patients and will continue to protect the health and safety of the public.

**Rationale for Using Fast-Track Process:** The action results in a less restrictive regulation, has been approved by the Advisory Board on Physician Assistants, has unanimous approval of the Board of Medicine, and will not be controversial.

**Substance:** The only substantive changes are relating to notification requirements for discontinuation of employment or absences of the supervising physician to make them more reasonable and less burdensome.

**Issues:** There are no advantages or disadvantages to the public. There are no advantages or disadvantages to the agency or 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.

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## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (the Board) proposes 1) to no longer require that a physician supervising a physician assistant notify the Board when he or she must be absent from the practice provided there is an alternate supervisor present at the practice, and 2) to allow either the supervising physician or the assistant to inform the Board if the physician assistant will discontinue working under the physician with whom he has a practice agreement on file.

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

Estimated Economic Impact. The proposed changes will no longer require that a physician supervising a physician assistant notify the Board when he or she must be absent from the practice provided there is an alternate supervisor present at the practice. Currently, the regulations require the supervisor to notify the Board if he or she is unable to supervise due to illness, vacation, unexpected absence, or planned absence and must temporarily delegate supervision to another physician. The amended regulation will require a report only in the absence of both the supervisor and the alternate supervising physician. This change is expected to reduce the supervising physicians time and postage costs associated with such notifications since a reduction in the number of required notifications will result from this change.

In addition, the proposed changes will amend the regulatory language to allow either the supervising physician or the assistant to inform the Board if the physician assistant will discontinue working under the physician with whom he has a practice agreement on file. Current language requires both the supervising physician and the assistant to inform the Board. However, in practice, the Department of Health Professions (DHP) accepts this notification from both the supervising physician and the assistant. Even though there will be no change in the current practice followed by DHP, a reduction in the number of duplicate notifications may be expected due to the misleading nature of the current regulatory language.

Businesses and Entities Affected. There are currently 2,622 licensed physician assistants. The number of supervising physicians is not known.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. A small reduction in time and postage costs may be expected from reduced reporting requirements. If the business entity for which the supervising physician or physician assistant is working for is responsible for handling such notifications, the expected reduction in costs should have a positive impact on

the asset value of the business. However, the magnitude of such impact is likely to be very small.

Small Businesses: Costs and Other Effects. If the supervising physician or physician assistant is working for a small business, the small business may benefit from reduced reporting requirements depending on whether the business entity is responsible for handling such notifications.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not anticipated to have an adverse impact on small businesses.

Real Estate Development Costs. No significant impact on real estate development costs is expected.

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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Medicine concurs with the analysis of the Department of Planning and Budget for 18VAC85-50, Regulations Governing the Practice of Physician Assistants, relating to regulatory reform changes.

### Summary:

*Amendments (i) add requirements for the practice agreement to include those relating to prescriptive authority; (ii) revise the notification requirements to make them less burdensome; and (iii) adjust some terminology to conform to current Virginia Administrative Code language.*

Part I  
General Provisions

**18VAC85-50-10. Definitions.**

A. The following words and terms shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board."

"Physician assistant."

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

~~"Committee" means the Advisory Committee on Physician Assistants as specified in § 54.1-2950.1 of the Code of Virginia.~~

"Group practice" means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry licensed by the board who practice as a partnership or professional corporation.

"Institution" means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

"NCCPA" means the National Commission on Certification of Physician Assistants.

"Practice agreement" means a written agreement developed by the supervising physician and the physician assistant that defines the supervisory relationship between the physician assistant and the physician, the prescriptive authority of the physician assistant, and the circumstances under which the physician will see and evaluate the patient.

"Supervision" means:

1. "Alternate supervising physician" means a member of the same group or professional corporation or partnership of any licensee, any hospital or any commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth who has registered with the board and who has accepted responsibility for the supervision of the service that a physician assistant renders.
2. "Direct supervision" means the physician is in the room in which a procedure is being performed.
3. "General supervision" means the supervising physician is easily available and can be physically present or accessible for consultation with the physician assistant within one hour.
4. "Personal supervision" means the supervising physician is within the facility in which the physician's assistant is functioning.
5. "Supervising physician" means the doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth

who has accepted responsibility for the supervision of the service that a physician assistant renders.

6. "Continuous supervision" means the supervising physician has on-going, regular communication with the physician assistant on the care and treatment of patients.

**18VAC85-50-57. Discontinuation of employment.**

If for any reason the assistant discontinues working in the employment and under the supervision of a licensed practitioner, such assistant ~~and~~ or the employing practitioner shall so inform the board. A new ~~protect~~ practice agreement shall be submitted to the board and approved by the board in order for the assistant either to be reemployed by the same practitioner or to accept new employment with another supervising physician.

**18VAC85-50-115. Responsibilities of the physician assistant.**

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the supervising physician as prescribed in the physician assistant's practice agreement. When a physician assistant is to be supervised by an alternate supervising physician outside the scope of specialty of the supervising physician, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate practice agreement for that alternate supervising physician is approved and on file with the board.
2. Prescribe only those drugs and devices as allowed in Part V (18VAC85-50-130 et seq.) of this chapter.
3. Wear during the course of performing his duties identification showing clearly that he is a physician assistant.

B. If, due to illness, vacation, or unexpected absence, the supervising physician or alternate supervising physician is unable to supervise the activities of his assistant, such supervising physician may temporarily delegate the responsibility to another doctor of medicine, osteopathic medicine, or podiatry. The supervising physician so delegating his responsibility shall report such arrangement for coverage, with the reason therefor, to the board office in writing, subject to the following provisions:

1. For planned absence, such notification shall be received at the board office at least one month prior to the ~~supervising physician's~~ absence of both the supervising and alternate supervising physicians;
2. For sudden illness or other unexpected absence that necessitates temporary coverage, the board office shall be notified as promptly as possible, but in no event later than one week; and
3. Temporary coverage may not exceed four weeks unless special permission is granted by the board.

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C. With respect to assistants employed by institutions, the following additional regulations shall apply:

1. No assistant may render care to a patient unless the physician responsible for that patient has signed the practice agreement to act as supervising physician for that assistant. The board shall make available appropriate forms for physicians to join the practice agreement for an assistant employed by an institution.
2. Any such practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said physician authorizes the assistant to perform.
3. The assistant shall, as soon as circumstances may dictate, report an acute or significant finding or change in clinical status to the supervising physician concerning the examination of the patient. The assistant shall also record his findings in appropriate institutional records.

D. Practice by a physician assistant in a hospital, including an emergency department, shall be in accordance with § 54.1-2952 of the Code of Virginia.

VA.R. Doc. No. R13-3593; Filed July 19, 2013, 11:37 a.m.

## **Fast-Track Regulation**

**Title of Regulation: 18VAC85-101. Regulations Governing the Practice of Radiologic Technology (amending 18VAC85-101-10, 18VAC85-101-40, 18VAC85-101-55, 18VAC85-101-60, 18VAC85-101-130).**

**Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.**

**Public Hearing Information: No public hearings are scheduled.**

**Public Comment Deadline: September 11, 2013.**

**Effective Date: September 26, 2013.**

**Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.**

**Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Specific authority for regulation of radiologic technologists and radiologic technologists-limited is found in § 54.1-2956.8:1 of the Code of Virginia.**

**Purpose: The purpose of the amended regulations is to include a credential in nuclear medicine as qualification for licensure as a radiologic technologist, which will allow someone to specialize in an essential field of radiologic technology to provide greater expertise and public safety for patients who utilize those services. The clarification that practical experience in radiographic procedures required for a limited license must be on live patients and that administration of contrast media or radiopharmaceuticals is not within the scope of practice of a radiologic technologist-limited will ensure that only radiologic technologists who**

have had the education and examination required for full licensure can perform those specialized tasks.

**Rationale for Using Fast-Track Process: The amendments provide either less restrictive regulation or clarification of current regulation, have been approved by the Advisory Board on Radiologic Technology, and have unanimous approval of the Board of Medicine. The amendments will not be controversial.**

**Substance: Amendments to 18VAC85-101 include another certification as qualification for licensure as a radiologic technologist to make the requirements less restrictive and more inclusive. Additionally, amendments clarify that practical experience in radiographic procedures required for a limited license must be on live patients and that administration of contrast media or radiopharmaceuticals is not within the scope of practice of a radiologic technologist-limited.**

**Issues: There are no advantages or disadvantages to the public, which will continue to be protected by the same criteria for minimal competency for initial licensure. There are no advantages or disadvantages to the agency or 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. The Board of Medicine (the Board) proposes to add passage of the Nuclear Medicine Technology Certification Board's (NMTCB) exam as a credential qualifying an applicant for licensure as a radiologic technologist.**

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

**Estimated Economic Impact. The proposed changes will add another certification as qualification for licensure as a radiologic technologist. Current regulations require passage of the American Registry of Radiologic Technologists (ARRT) certification exam for licensure. The Board proposes to add passage of the NMTCB exam as a credential qualifying an applicant for licensure as a radiologic technologist. According to the Board, a person intending to practice in nuclear medicine is likely to be certified by the NMTCB rather than the ARRT which is an acceptable pathway for licensure as a radiologic technologist.**

**The proposed changes will benefit persons who have the NMTCB credential as this certification will qualify them for licensure as a radiologic technologist without having to also obtain the ARRT certification as currently required.**

**Additionally, the proposed amendments will clarify that practical experience in radiographic procedures required for a limited license must be on live patients and that administration of contrast media or radiopharmaceuticals is**

not within the scope of practice of a radiologic technologist-limited. These changes are not expected to create any significant economic impact other than minimizing chances for potential confusion for applicants and licensees.

**Businesses and Entities Affected.** There are currently 3,858 licensed radiologic technologists and 735 radiologic technologists-limited. It is unknown how many future applicants may be affected by the addition of the NMTCB certification as a credential qualifying an applicant for licensure as a radiologic technologist.

**Localities Particularly Affected.** The proposed changes apply throughout the Commonwealth.

**Projected Impact on Employment.** Since the additional persons, those with NMTCB certification, will qualify for licensure, a positive impact on the supply of radiologic technologists may be expected. While an increase in supply should have a positive impact on employment, the magnitude of such impact and its effect on employment is not known.

**Effects on the Use and Value of Private Property.** No significant effects on the use and value of private property are expected.

**Small Businesses: Costs and Other Effects.** No costs or other effects on small businesses are expected.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No adverse impact on small businesses is expected.

**Real Estate Development Costs.** No impact on real estate development costs is expected.

**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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Medicine concurs with the analysis of the Department of Planning and Budget for 18VAC85-101, Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited, relating to clarification of regulations.

**Summary:**

*The amendments (i) add passage of the Nuclear Medicine Technology Certification Board's exam as a credential for qualification for licensure as a radiologic technologist, (ii) clarify that practical experience in radiographic procedures required for a limited license must be on live patients, and (iii) clarify that administration of contrast media or radiopharmaceuticals is not within the scope of practice of a radiologic technologist-limited.*

**Part I**

**General Provisions**

**18VAC85-101-10. Definitions.**

In addition to definitions in § 54.1-2900 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:

"ACRRT" means the American Chiropractic Registry of Radiologic Technologists.

"ARRT" means the American Registry of Radiologic Technologists.

"Bone densitometry" means a process for measuring bone mineral density by utilization of single x-ray absorptiometry (SXA), dual x-ray absorptiometry (DXA) or other technology that is substantially equivalent as determined by the board.

"Direct supervision" means that a licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic or podiatry is present and is fully responsible for the activities performed by radiologic personnel, with the exception of radiologist assistants.

"Direction" means the delegation of radiologic functions to be performed upon a patient from a licensed doctor of medicine, osteopathy, chiropractic, or podiatry, to a licensed radiologic technologist or a radiologic technologist-limited for a specific purpose and confined to a specific anatomical area, that will be performed under the direction of and in continuing communication with the delegating practitioner.

"ISCD" means the International Society for Clinical Densitometry.

"NMTCB" means Nuclear Medicine Technology Certification Board.

"Radiologist" means a doctor of medicine or osteopathic medicine specialized by training and practice in radiology.

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"R.T.(R)" means a person who is currently certified by the ARRT as a radiologic technologist with certification in radiography.

"Traineeship" means a period of activity during which an applicant for licensure as a radiologic technologist works under the direct supervision of a practitioner approved by the board while waiting for the results of the licensure examination or an applicant for licensure as a radiologic technologist-limited working under direct supervision and observation to fulfill the practice requirements in 18VAC85-101-60.

## **18VAC85-101-40. Licensure requirements.**

A. An applicant for board licensure shall:

1. Meet the educational requirements specified in 18VAC85-101-30;
2. Submit the required application, fee, and credentials to the board; and
3. Submit evidence of passage of the ARRT or the NMTCB certification examination with a minimum passing score acceptable to the board.

B. If an applicant has been licensed or certified in another jurisdiction, he shall provide information on the status of each license or certificate held and verification from that jurisdiction of any current, unrestricted license.

C. An applicant who fails the ARRT or NMTCB examination shall follow the policies and procedures of the ARRT certifying body for successive attempts.

### Part IV

Licensure Requirements - Radiologic Technologist-Limited

## **18VAC85-101-55. Educational requirements for radiologic technologists-limited.**

A. An applicant for licensure as a radiologic technologist-limited shall be trained by one of the following:

1. Successful completion of ~~a program~~ educational coursework that is directed by a radiologic technologist with a bachelor's degree and current ARRT certification, has instructors who are licensed radiologic technologists or doctors of medicine or osteopathic medicine who are board certified in radiology, and has a minimum of the following coursework:
  - a. Image production/equipment operation - 25 clock hours;
  - b. Radiation protection - 15 clock hours; and
  - c. Radiographic procedures in the anatomical area of the radiologic technologist-limited's practice - 10 clock hours taught by a radiologic technologist with current ARRT certification or a licensed doctor of medicine, osteopathy, podiatry or chiropractic;
2. An ACRRT-approved program;
3. The ISCD certification course for bone densitometry; or
4. Any other program acceptable to the board.

B. A radiologic technologist-limited who has been trained through the ACRRT-approved program or the ISCD certification course and who also wishes to be authorized to perform x-rays in other anatomical areas shall meet the requirements of subdivision A 1 of this section.

## **18VAC85-101-60. Licensure requirements.**

A. An applicant for licensure by examination as a radiologic technologist-limited shall submit:

1. The required application and fee as prescribed by the board;
2. Evidence of successful completion of an examination as required in this section; and
3. Evidence of completion of training as required in 18VAC85-101-55.

B. To qualify for limited licensure to practice under the direction of a doctor of medicine or osteopathic medicine, with the exception of practice in bone densitometry, the applicant shall:

1. Provide evidence that he has received a passing score as determined by the board on the core section of the ARRT examination for Limited Scope of Practice in Radiography;
2. Meet one of the following requirements:

- a. Provide evidence that he has received a passing score, as determined by the board, on the section of the ARRT examination on specific radiographic procedures, depending on the anatomical areas in which the applicant intends to practice; or

- b. Until the ARRT offers an examination for limited licensure in the radiographic procedures of the abdomen and pelvis, the applicant may qualify for a limited license by submission of a notarized statement from a licensed radiologic technologist or doctor of medicine or osteopathy attesting to the applicant's training and competency to practice in that anatomical area as follows:

- (1) To perform radiographic procedures on the abdomen or pelvis, the applicant shall have successfully performed during the traineeship at least 25 radiologic examinations on patients of the abdomen or pelvis under the direct supervision and observation of a licensed radiologic technologist or a doctor of medicine or osteopathy. The notarized statement shall further attest to the applicant's competency in the areas of radiation safety, positioning, patient instruction, anatomy, pathology and technical factors.

- (2) When a section is added to the limited license examination by the ARRT that includes the abdomen and pelvis, the applicant shall provide evidence that he has received a passing score on that portion of the examination as determined by the board; and

3. Provide evidence of having successfully performed in a traineeship at least 10 radiologic examinations on patients



in the anatomical area for which he is seeking licensure under the direct supervision and observation of a licensed radiologic technologist or a doctor of medicine or osteopathy. A notarized statement from the supervising practitioner shall attest to the applicant's competency in the areas of radiation safety, positioning, patient instruction, anatomy, pathology and technical factors.

C. To qualify for limited licensure to practice in bone densitometry under the direction of a doctor of medicine, osteopathy, or chiropractic, the applicant shall either:

1. Provide evidence that he has received a passing score as determined by the board on the core section of the ARRT examination for Limited Scope of Practice in Radiography; and

a. The applicant shall provide a notarized statement from a licensed radiologic technologist or doctor of medicine, osteopathy, or chiropractic attesting to the applicant's training and competency to practice in that anatomical area. The applicant shall have successfully performed at least 10 examinations on patients for bone density under the direct supervision and observation of a licensed radiologic technologist or a doctor of medicine or osteopathy; or

b. When a section is added to the limited license examination by the ARRT that includes bone densitometry, the applicant shall provide evidence that he has received a passing score on that portion of the examination as determined by the board; or

2. Provide evidence that he has taken and passed an examination resulting in certification in bone densitometry from the ISCD or any other substantially equivalent credential acceptable to the board.

D. To qualify for a limited license in the anatomical areas of the spine or extremities or in bone densitometry to practice under the direction of a doctor of chiropractic, the applicant shall provide evidence that he has met the appropriate requirements of subsection B, taken and passed the appropriate requirements of subsection C for bone densitometry only, or taken and passed an examination by the ACRRT.

E. To qualify for a limited license in the anatomical area of the foot and ankle to practice under the direction of a doctor of podiatry, the applicant shall provide evidence that he has taken and passed an examination acceptable to the board.

F. An applicant who fails the examination shall be allowed two more attempts to pass the examination after which he shall reapply and take additional educational hours which meet the criteria of 18VAC85-101-70.

#### Part VII

#### Practice of Radiologic Technologist-Limited

#### **18VAC85-101-130. General requirements.**

A. A radiologic technologist-limited is permitted to perform radiologic functions within his capabilities and the anatomical

limits of his training and examination. A radiologic technologist-limited is responsible for informing the board of the anatomical area or areas in which he is qualified by training and examination to practice.

B. A radiologic technologist-limited shall not ~~instill~~ administer contrast media ~~during radiologic examinations or radiopharmaceuticals~~ or perform mammography, fluoroscopic procedures, computerized tomography, or vascular-interventional procedures. The radiologic technologist-limited is responsible to a licensed radiologic technologist, or doctor of medicine, osteopathy, chiropractic, or podiatry.

VA.R. Doc. No. R13-3589; Filed July 12, 2013, 10:15 a.m.

#### **Fast-Track Regulation**

**Title of Regulation:** **18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-50, 18VAC85-110-60; repealing 18VAC85-110-130).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system, and § 54.1-2956.9 of the Code of Virginia provides the board specific authority for regulation of licensed acupuncturists.

**Purpose:** The purpose of the amended regulation is to update educational standards for consistency with the accrediting body for acupuncture education and eliminate a redundant requirement for maintenance of patient records. Existing regulations are essential for the protection of the public's health and safety in receiving acupuncture services.

**Rationale for Using Fast-Track Process:** The regulatory amendments provide less restrictive regulations, which have been approved by the Advisory Board on Acupuncture and have the unanimous approval of the Board of Medicine, and will not be controversial.

**Substance:** There are no substantive changes to existing regulations. Amendments to 18VAC85-110 (i) update and clarify regulations for acupuncture education and maintenance of records consistent with current requirements and policies of the board; (ii) repeal redundant, unnecessary requirements for maintenance of patient records; (iii) add educational standards that have been in effect for accredited institutions or programs since 2011; and (iv) allow applicants

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# Regulations

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from foreign countries to use a translating service for their documents rather than having to go through their embassies.

Issues: There are no advantages or disadvantages to the public, which will continue to be protected by the same criteria for minimal competency for initial licensure. There are no advantages or disadvantages to the agency or 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.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (the Board) proposes to allow acupuncturist applicants to use a translating service for their documents in a foreign language rather than having to go through the embassy of the issuing government.

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

Estimated Economic Impact. The proposed regulations will allow applicants to use a translating service for their documents in a foreign language rather than having to go through the embassy of the issuing government. Currently, regulations require that documents which are not in English be translated and certified by the embassy of the issuing government. According to the Department of Health Professions (DHP), embassies often do not fulfill that service, so documents are generally translated by a translating service. The regulations are amended to allow for that option.

According to DHP, approximately one half of the 450 licensed acupuncturists in Virginia are from foreign countries. This proposed change will make it easier for them to have their documents translated and submitted to the Board.

The remaining changes are not expected to have any significant economic impact as they merely update and clarify regulations for acupuncture education and maintenance of records consistent with current requirements and policies of the Board.

Businesses and Entities Affected. The proposed regulations apply to 450 licensed acupuncturists in Virginia. One half of the licensed acupuncturists are estimated to be foreign and likely to benefit from being able to use a translating service for their foreign documents.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. Although the proposed changes have the potential to reduce demand for translating services from embassies and to increase demand from private entities offering translation services, the magnitude of the impact on employment is expected to be very small.

Effects on the Use and Value of Private Property. Although the proposed changes have the potential to increase demand

from private entities offering translation services and have a positive impact on their asset values, the magnitude of the impact is not expected to be significant.

Small Businesses: Costs and Other Effects. Almost all of the licensed acupuncturists are thought to practice as small businesses. The proposed changes do not introduce any costs on them, but rather provide some benefit as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No real estate development costs are expected from the proposed changes.

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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Medicine concurs with the analysis of the Department of Planning and Budget for 18VAC85-110, Regulations Governing the Practice of Licensed Acupuncturists, relating to regulatory reform changes.

Summary:

*Amendments to 18VAC85-110 (i) update and clarify regulations for acupuncture education and maintenance of records consistent with current requirements and policies of the board; (ii) repeal redundant, unnecessary requirements for maintenance of patient records; (iii) add educational standards, which have been in effect for accredited institutions or programs since 2011; and (iv) allow applicants from foreign countries to use a*

*translating service for their documents rather than having to go through their embassies.*

Part II  
Requirements for Licensure

**18VAC85-110-50. Educational requirements: graduates of approved institutions or programs in the United States.**

A. Requirements for acupuncture education obtained prior to July 1, 1990, shall be as provided in this subsection.

1. An applicant applying for licensure to practice as an acupuncturist on the basis of successful completion of education in a school or college of acupuncture accredited by the ACAOM or other accrediting agencies approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of successful completion of an acupuncture course of study in an accredited school or college for acupuncture, providing evidence of not less than 1,000 hours of schooling in not less than a continuous 18-month period.

2. The studies shall include not less than 700 didactic hours and not less than 250 clinical hours. Additional hours may be in either didactic or clinical hours based upon the school or college curriculum.

B. Requirements for acupuncture education obtained after July 1, 1990, shall be as provided in this subsection.

An applicant applying for licensure to practice as a licensed acupuncturist on the basis of successful completion of education in a school or college for acupuncture accredited by ACAOM or any other accrediting agency approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of having a minimum of three academic years in length equivalent to 90 semester credit hours or 135 quarter credit hours.

One academic year means full-time study completed in ~~three~~ four quarters, two semesters, or three trimesters. A full-time continuous study program shall be a concentrated educational process in acupuncture ~~which that~~ requires individual study with assigned materials in a classroom or clinical setting.

C. Requirements for acupuncture education obtained after July 1, 1999, shall be as provided in this subsection. An applicant applying for licensure to practice as a licensed acupuncturist on the basis of successful completion of education in a school or college for acupuncture accredited by ACAOM or any other accrediting agency approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of having a minimum of 1,725 hours of entry-level acupuncture education to include at least 1,000 didactic hours and 500 clinical hours. Clinical hours may include observation, as well as internship or treatment hours; the remaining 225 hours may be earned as either didactic or clinical. Correspondence programs or courses in acupuncture are

excluded and ~~do not~~ may not be used to meet the requirements for acupuncture education.

D. Requirements for acupuncture education obtained after February 1, 2011, shall be as provided in this subsection. An applicant applying for licensure to practice as a licensed acupuncturist on the basis of successful completion of education in a school or college for acupuncture accredited by ACAOM or any other accrediting agency approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of having a minimum of 1,905 hours of entry-level acupuncture education to include at least 1,155 didactic hours and 660 clinical hours. Clinical hours may include observation, as well as internship or treatment hours; the remaining 90 hours may be earned as either didactic or clinical hours. Correspondence programs or courses in acupuncture are excluded and may not be used to meet the requirements for acupuncture education.

~~D. E.~~ E. An applicant from an acupuncture program in a school or college that has achieved candidacy status for accreditation by ACAOM shall be eligible for licensure provided the program has subsequently been granted accreditation within three years of the applicant's graduation.

**18VAC85-110-60. Requirements of foreign graduates of nonaccredited educational programs in acupuncture.**

A. An applicant who has completed an educational course of study in a school or college outside the United States or Canada that is not accredited by ACAOM or any other board-approved accrediting agency shall:

1. Submit a transcript from his educational course of study in acupuncture to a credential evaluation service approved by the board to determine equivalency in education and training to that required in 18VAC85-110-50.

2. Meet the examination requirements as prescribed in 18VAC85-110-80 and 18VAC85-110-90.

B. All documents submitted to the board which are not in English must be translated into English and certified by the embassy of the issuing government or by a translating service.

**18VAC85-110-130. ~~Maintenance of patient records.~~ (Repealed.)**

~~A licensed acupuncturist shall maintain records of his diagnosis and treatment, and the patient's response to acupuncture and shall submit records to the board upon request, unless release of subject records is otherwise prohibited by law. Failure to maintain patient records of those patients treated with acupuncture or failure to respond to the board's request for patient records within 30 days shall be grounds for suspension or revocation of a license to practice acupuncture.~~

VA.R. Doc. No. R13-3588; Filed July 12, 2013, 10:15 a.m.

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# Regulations

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## Fast-Track Regulation

**Title of Regulation: 18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-10, 18VAC85-120-75, 18VAC85-120-80; adding 18VAC85-120-35; repealing 18VAC85-120-60, 18VAC85-120-70, 18VAC85-120-150).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system, and § 54.1-2957.4 of the Code of Virginia contains provisions regarding the powers of the board concerning athletic training, including that the board shall establish criteria for the licensure of athletic trainers and promulgate regulations necessary for the licensure of athletic trainers and the issuance of licenses to athletic trainers to practice in the Commonwealth.

**Purpose:** The purpose of the amended regulation is to update terminology and reduce the burden on applicants who are currently required to submit transcripts to confirm graduation from an accredited athletic training educational program and evidence of passage of the National Athletic Trainers' Association Board of Certification (NATABOC) examination. The amendments do not change the educational and examination criteria as evidence of minimal competency in providing services and continue to protect the health and safety of the public.

**Rationale for Using Fast-Track Process:** The action results in a less restrictive regulation, has been approved by the Advisory Board on Athletic Trainers, has unanimous approval of the Board of Medicine, and will not be controversial.

**Substance:** The board has determined that evidence of graduation by way of a transcript, as required in 18VAC85-120-60, and documentation of passage of the NATABOC examination, as required in 18VAC85-120-70, are redundant to criteria for certification and unnecessarily burdensome on applicants, educational institutions, and the board. Evidence of current NATABOC certification provides assurance that an applicant has met the educational and examination requirements for licensure, so the amendments repeal 18VAC85-120-60 and 18VAC85-120-70. Other amendments clarify language of the current regulations.

**Issues:** There are no advantages or disadvantages to the public, which will continue to be protected by the same

criteria for minimal competency for initial licensure. There are no advantages or disadvantages to the agency or 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.** The Board of Medicine (Board) proposes to no longer require that applicants for athletic trainer licensure submit: 1) evidence of meeting the education requirement by way of a transcript and 2) documentation of passage of the National Athletic Trainers Association Board of Certification (NATABOC) entry level examination.

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

**Estimated Economic Impact.** The current regulations effectively require that athletic trainer licensure applicants submit information including: 1) evidence of meeting the education requirement by way of a transcript (section 60), and 2) documentation of passage of the NATABOC entry level examination (section 70). In addition, section 50 of these regulations requires that "An applicant for licensure shall submit evidence of meeting the following requirements for licensure on forms provided by the board... 3. Evidence of current NATABOC certification." The NATABOC education requirements for certification are the same as the education requirements currently stated in these regulations for licensure. Also, NATABOC certification requires passage of the entry level examination. Thus, the currently required education transcript and documentation of passage of the NATABOC entry level examination provides no additional information beyond that provided by the also required evidence of NATABOC certification. Consequently, the Board's proposal to no longer require that applicants for athletic trainer licensure submit evidence of meeting the education requirement by way of a transcript and documentation of passage of the NATABOC examination will create a net benefit by saving applicants the time and cost associated with obtaining and sending these documents, while not changing the actual required qualifications for licensure.

**Businesses and Entities Affected.** There are currently 1210 athletic trainers licensed in the Commonwealth. The proposed amendments would affect future applicants for licensure. According to the Department of Health Professions, most licensed athletic trainers work for universities, school systems or other athletic-centered organizations.

**Localities Particularly Affected.** The proposed amendment does not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed amendment is unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposal to no longer require that applicants for athletic trainer licensure submit evidence of meeting the education requirement by way of a transcript and documentation of passage of the NATABOC examination will moderately reduce costs for the applicants by saving the time and postage associated with obtaining and sending these documents.

Small Businesses: Costs and Other Effects. The proposed amendments do not increase costs for small businesses.

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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Medicine concurs with the analysis of the Department of Planning and Budget for 18VAC85-120, Regulations Governing the Licensure of Athletic Trainers, relating to regulatory reform changes.

Summary:

*The amendments clarify the current regulations and repeal redundant requirements. The Board of Medicine has determined that evidence of graduation by way of a transcript, as required in 18VAC85-120-60, and documentation of passage of the National Athletic Trainers' Association Board of Certification (NATABOC) examination, as required in 18VAC85-120-70, are*

*redundant to criteria for certification and unnecessarily burdensome on applicants, educational institutions, and the board.*

Part I  
General Provisions

**18VAC85-120-10. Definitions.**

In addition to words and terms defined in § 54.1-2900 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:

~~"Accredited educational program" means a program in athletic training accredited by the Commission on Accreditation of Athletic Training Education (CAATE) or any other agency approved by the National Athletic Trainers' Association Board of Certification (NATABOC) for its entry level certification examination or any other organization approved by the board.~~

"Advisory board" means the Advisory Board on Athletic Training to the board as specified in § 54.1-2957.5 of the Code of Virginia.

"Athletic trainer" means a person licensed by the Virginia Board of Medicine to engage in the practice of athletic training as defined in § 54.1-2900 of the Code of Virginia.

"Board" means the Virginia Board of Medicine.

"NATABOC" means the National Athletic Trainers' Association Board of Certification.

**18VAC85-120-35. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. The following fees have been adopted by the board:

1. The application fee shall be \$130.
2. The fee for renewal of licensure shall be \$135 and shall be due in the licensee's birth month, in each odd-numbered year.
3. A fee of \$50 for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.
4. The fee for reinstatement of a license that has expired for two or more years shall be \$180 and shall be submitted with an application for reinstatement.
5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
6. The fee for a duplicate renewal license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.
7. The fee for a returned check shall be \$35.
8. The fee for a letter of verification to another jurisdiction shall be \$10.
9. The fee for an inactive license shall be \$70, and the fee for a late renewal shall be \$25.

**18VAC85-120-60. Educational requirements. (Repealed.)**

~~An applicant for licensure shall:~~

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1. Be a graduate of an accredited educational program for athletic trainers; or
2. Have met the educational requirement necessary to hold current credentialing as a Certified Athletic Trainer (ATC) from NATABOC or another credentialing body approved by the board.

## **18VAC85-120-70. Examination requirements. (Repealed.)**

An applicant for a license to practice as an athletic trainer shall pass the NATABOC entry level examination for athletic trainers or its equivalent as determined by the board.

## **18VAC85-120-75. Provisional Temporary authorization to practice.**

Upon written request from an applicant and his employer and for good cause shown, an applicant who provides documentation of current NATABOC certification and, if licensed or certified by another jurisdiction in the United States, documentation that his license or certificate is current and unrestricted, may be granted temporary authorization to practice as an athletic trainer for 45 days pending submission of all other required documentation and issuance of a license. At the discretion of the board, additional time, not to exceed 15 days, may be allowed to complete the application process.

## **18VAC85-120-80. Provisional licensure.**

A. An applicant who ~~is a graduate of an accredited education program and who has applied to take~~ has been approved by NATABOC to sit for the certification examination may be granted a provisional license to practice athletic training under the supervision and control of an athletic trainer.

B. The graduate shall submit an application for a provisional license to the board for review and approval by the Chair of the Advisory Board on Athletic Training or his designee.

C. The provisional license shall expire six months from issuance or upon receipt of notification of a failing score on the NATABOC certification examination or upon licensure as an athletic trainer by the board, whichever comes first.

### **Part V Fees**

## **18VAC85-120-150. Fees. (Repealed.)**

A. ~~Unless otherwise provided, fees listed in this section shall not be refundable.~~

B. ~~The following fees have been adopted by the board:~~

1. ~~The application fee shall be \$130.~~
2. ~~The fee for renewal of licensure shall be \$135 and shall be due in the licensee's birth month, in each odd-numbered year.~~
3. ~~A fee of \$50 for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.~~
4. ~~The fee for reinstatement of a license that has expired for two or more years shall be \$180 and shall be submitted with an application for reinstatement.~~

5. ~~The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.~~

6. ~~The fee for a duplicate renewal license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.~~

7. ~~The fee for a returned check shall be \$35.~~

8. ~~The fee for a letter of verification to another jurisdiction shall be \$10.~~

9. ~~The fee for an inactive license shall be \$70, and the fee for a late renewal shall be \$25.~~

### **Part VI V**

### **Standards of Professional Conduct**

VA.R. Doc. No. R13-3568; Filed July 19, 2013, 11:36 a.m.

## **BOARD OF PHARMACY**

### **Fast-Track Regulation**

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-40, 18VAC110-20-105, 18VAC110-20-270, 18VAC110-20-420, 18VAC110-20-425, 18VAC110-20-710).**

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: September 11, 2013.

Effective Date: September 26, 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: 18VAC110-20, Regulations Governing the Practice of Pharmacy, are 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 regulatory action is the result of a review conducted by staff of the Board of Pharmacy and the Department of Health Professions pursuant to the Governor's Regulatory Reform Initiative. The amendments eliminate requirements that are not necessary to protect the integrity and safety of prescription medication or to assure the competency of applicants and those renewing their technician registration. As new technology is developing and pharmacy systems change and become more automated, the board amends its regulations to facilitate pharmacy practice that maintains safeguards, reduces the possibility of human error in dispensing of prescription drugs, and protects the health, welfare, and safety of the public.

**Rationale for Using Fast-Track Process:** The board has opted to use the fast-track process for two reasons: (i) the action is consistent with the Governor's project to reform regulations that are unnecessarily burdensome; and (ii) the board does not anticipate any objection to the changes or the changes to be controversial.

**Substance:** Amendments (i) facilitate electronic renewal of licenses; (ii) accommodate verification of practical experience for pharmacy interns coming from some other states; (iii) eliminate the requirement for pharmacy technicians to submit documentation of continuing education to renew registration; (iv) allow for more than one pharmacist to be involved in verifying the accuracy of a prescription and clarify documentation for each involvement; (v) modify the requirement for labeling in unit dose dispensing systems to protect patient privacy; (vi) allow for current technology that uses compliance packaging instead of a unit dose dispensing system in hospitals or long-term care facilities; and (vii) eliminate the requirement for an alarm system for teaching institutions that only stock Schedule VI drugs.

**Issues:** The primary advantages of the regulatory action to the public is less burdensome and costly regulation for applicants, registrants, and pharmacies that utilize newer technology and dispensing systems. 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 part of the regulatory reform initiative, the Board of Pharmacy (Board) proposes to amend its Regulations Governing the Practice of Pharmacy to: 1) delete fees that no longer are applicable, 2) allow licensees to attest that they have completed their required continuing education hours for license renewal, 3) allow more than one pharmacist to verify the accuracy of a prescription, 4) change the requirements for labeling an individual patients drug drawer, 5) allow a pharmacy providing services to a hospital or long term care facility to use a robotic pharmacy system that dispenses drugs in bar-coded unit doses or compliance packaging and 6) allow an exemption to alarm system requirements for teaching institutions that only stock schedule IV drugs.

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

Estimated Economic Impact. Current regulations contain one-time fees that were imposed for renewals between December 31, 2009 and April 30, 2010. As these fees are no longer applicable, the Board proposes to remove them from the regulations. No entity will incur costs on account of this change. Affected entities will likely benefit from the added

clarity that removing obsolete, and potentially confusing, language brings.

Current regulations require pharmacy technician to provide proof that they completed continuing education in order to renew their licenses. Board staff reports, however, that the Board has not actually required pharmacy technicians to submit such proof since 2009. The Board now proposes to eliminate the requirement for proof in these regulations and instead require pharmacy technicians to attest that they have completed required continuing education when they renew their licenses. This change will benefit licensees by bringing regulations into conformity with current practice and by saving them possible bookkeeping and mailing expenses in the future if the Board left this requirement intact and instead decided that licensees once again needed to comply with regulations and provide proof of continuing education.

Board staff reports that currently section 270 of these regulations, which speaks of one pharmacist verifying the accuracy of a prescription, could be read to contradict section 276 of these regulations, which requires the identification of individual pharmacists who, jointly would be responsible for prescription dispensing functions. To fix this contradiction, the Board now proposes to add rules for multiple pharmacists to verify a dispensed prescription. These rules will require that a record be maintained identifying the date of dispensing, the name of each pharmacist involved in dispensing and the individual task for which he or she is responsible in the verification process. Affected entities will likely benefit from the added clarity that this change brings to these regulations.

Current regulations require that patients individual drug drawers in hospitals or long term care facilities be labeled with their names. As this may violate HIPPA privacy requirements, the Board proposes to change this and instead require that drawers be labeled in such a manner as to identify the patient and his location without violating health privacy laws. This change will likely benefit patients, as their privacy will be protected, and will also benefit licensees, as they will no longer be required in regulation to violate federal law.

Currently, pharmacies that provide services for hospitals and long term care facilities may in general use a robotic pharmacy system to dispense unit dose bar-coded drugs. There is a Board approved pilot program that allows dispensing of drugs in compliance packaging, also. The Board now proposes to allow these pharmacies to use robotic pharmacy systems to dispense both drugs in bar-coded unit doses and in compliance packaging. This change will benefit pharmacies that provide services for hospitals and long term care facilities by allowing them greater flexibility in choosing how to dispense drugs without paying the \$250 fee and accruing time costs associated with applying to be part of the pilot program. No entity is likely to incur additional net costs on account of this change.

Current regulations require that any facility that is not staffed 24 hours a day store drugs in a fixed secured location with an

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alarm. These regulations currently exempt researchers, animal control officers, humane societies, alternate delivery sites and emergency medical services agencies that only stock intravenous fluids with no added drugs from this alarm requirement. The Board proposes to add teaching institutions possessing only schedule IV drugs (with low risk of theft or abuse) to the list of groups that are exempt from having to have an alarm system. This change will save eligible teaching institutions from bearing the expense of installing alarm systems on their drug closets.

**Businesses and Entities Affected.** The Department of Health Professions (DHP) reports that there are 1,772 pharmacies, 11,941 pharmacists and 12,227 pharmacy technicians licensed to do business in the Commonwealth. All of these entities will be affected by these proposed regulations.

**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 any additional expense on account of these regulatory changes.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small business is likely to incur any additional expense on account of these regulatory changes.

**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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 DPBs best estimate of these economic impacts.

**Agency's Response to Economic Impact Analysis:** The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC110-20 relating to regulatory reform changes.

**Summary:**

*This regulatory action is the result of the Governor's Regulatory Reform Initiative. Amendments (i) facilitate electronic renewal of licenses; (ii) accommodate verification of practical experience for pharmacy interns coming from other states; (iii) eliminate the requirement for pharmacy technicians to submit documentation of continuing education to renew registration; (iv) allow for more than one pharmacist to be involved in verifying the accuracy of a prescription and clarify documentation for each involvement; (v) modify the requirement for labeling in unit dose dispensing systems to protect patient privacy; (vi) allow for current technology that uses compliance packaging instead of a unit dose dispensing system in hospitals or long-term care facilities; and (vii) eliminate the requirement for an alarm system for teaching institutions that only stock Schedule VI drugs.*

**18VAC110-20-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations	\$90
10. Innovative program approval.	\$250

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee,



not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

- 11. Approval of a pharmacy technician training program \$150
- 12. Approval of a continuing education program \$100
- 13. Approval of a repackaging training program \$50

D. Annual renewal fees.

- 1. Pharmacist active license – due no later than December 31 \$90
- 2. Pharmacist inactive license – due no later than December 31 \$45
- 3. Pharmacy technician registration – due no later than December 31 \$25
- 4. Pharmacy permit – due no later than April 30 \$270
- 5. Physician permit to practice pharmacy – due no later than February 28 \$270
- 6. Medical equipment supplier permit – due no later than February 28 \$180
- 7. Humane society permit – due no later than February 28 \$20
- 8. Nonresident pharmacy – due no later than April 30 \$270
- 9. Controlled substances registrations – due no later than February 28 \$90
- 10. Innovative program continued approval based on board order not to exceed \$200 per approval period.
- 11. Approval of a pharmacy technician training program \$75 every two years
- 12. Approval of a repackaging training program \$30 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

- 1. Pharmacist license \$30
- 2. Pharmacist inactive license \$15

- 3. Pharmacy technician registration \$10
- 4. Pharmacy permit \$90
- 5. Physician permit to practice pharmacy \$90
- 6. Medical equipment supplier permit \$60
- 7. Humane society permit \$5
- 8. Nonresident pharmacy \$90
- 9. Controlled substances registrations \$30
- 10. Approval of a pharmacy technician training program \$15
- 11. Approval of a repackaging training program \$10

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

- 1. Pharmacist license \$210
- 2. Pharmacist license after revocation or suspension \$500
- 3. Pharmacy technician registration \$35
- 4. Pharmacy technician registration after revocation or suspension \$125
- 5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:
  - a. Pharmacy permit \$240
  - b. Physician permit to practice pharmacy \$240
  - c. Medical equipment supplier permit \$210
  - d. Humane society permit \$30
  - e. Nonresident pharmacy \$115
  - f. Controlled substances registration \$180
  - g. Approval of a pharmacy technician \$75

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training program

h. Approval of a repackaging training program \$50

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge \$50

2. Change of ownership for any facility \$50

3. Inspection for remodeling or change of location for any facility 150

4. Reinspection of any facility \$150

5. Board-required inspection for a robotic pharmacy system \$150

6. Board-required inspection of an innovative program location \$150

7. Change of pharmacist responsible for an approved innovative program \$25

H. Miscellaneous fees.

1. Duplicate wall certificate \$25

2. Returned check \$35

~~I. For the annual renewal due on the stated dates, the following fees shall be imposed for a license, permit or registration:~~

~~1. Pharmacist active license—December 31, 2009 \$50~~

~~2. Pharmacist inactive license—December 31, 2009 \$25~~

~~3. Pharmacy technician registration—December 31, 2009 \$15~~

~~4. Pharmacy permit—April 30, 2010 \$210~~

~~5. Physician permit to practice pharmacy—February 28, 2010 \$210~~

~~6. Medical equipment supplier permit—February 28, 2010 \$140~~

~~7. Humane society permit—February 28, 2010 \$20~~

~~8. Nonresident pharmacy—April 30, 2010 \$210~~

~~9. Controlled substances registrations—February 28, 2010 \$50~~

## **18VAC110-20-40. Procedure for gaining practical experience.**

A. Each person desiring to gain practical pharmacy experience in Virginia shall first register with the board as a pharmacy intern on a form provided by the board prior to

becoming so engaged as a pharmacy intern. This requirement shall apply to any person gaining practical experience within the Commonwealth whether for licensure in Virginia or in another state.

B. In order to be eligible to register as a pharmacy intern, an applicant shall meet at least one of the following criteria:

1. The applicant shall be enrolled in and have started course work in a professional degree program of a board-approved school of pharmacy. Such registration is only valid while the student is enrolled in the school of pharmacy and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist. An expiration date shall be assigned to the registration to cover the estimated time period for the student to complete the school program and pass the required examinations. If the student is no longer enrolled in the school program, takes a voluntary break from the program, or is otherwise not actively participating in the school program, except for regularly scheduled school breaks, the registration is no longer valid and shall be returned to the board immediately;

2. The applicant is a graduate of a board-approved school of pharmacy or a graduate of a foreign school of pharmacy, has established educational equivalency and proficiency in English by obtaining the FPGEC certificate, and desires to gain required practical experience required for licensure as a pharmacist. Such applicant shall provide documentation on a board-approved form of current employment or an employment start date within 90 days in a pharmacy in Virginia with approval by the supervising pharmacist. An expiration date shall be assigned to cover the estimated time period needed to obtain the required practical experience hours and take the required examinations to become licensed as a pharmacist;

3. The applicant has already gained the required practical experience, but is an otherwise qualified applicant awaiting examination for licensure. A three-month expiration date shall be assigned to allow the applicant time to take required examinations; or

4. The applicant is an applicant for reactivation or reinstatement of a previously issued pharmacist license and is meeting board requirements for relicensure. An expiration date shall be assigned to reasonably cover the period of time necessary to meet the board requirements.

C. For documented, good cause shown, the executive director of the board may extend the expiration date of the intern registration upon submission of an application form approved by the board and payment of the initial application fee.

D. A pharmacy intern shall be supervised by a pharmacist who holds a current, unrestricted license and assumes full responsibility for the training, supervision and conduct of the intern.

E. The intern registration of a pharmacy student shall be valid only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.

F. Practical experience gained within any other state must be registered with and certified by the board of that state in order to be accepted or certified by this board. In the event that a state ~~does not use internships to gain practical experience in pharmacy but~~ relies on the pharmacy school to certify the hours of experience, an affidavit from the pharmacy school certifying the hours of experience gained in the United States may be accepted in lieu of board certification.

G. All practical experience of the pharmacy intern shall be evidenced by an affidavit approved by the board, which shall be filed prior to or with the application for examination for licensure.

H. An applicant for licensure by endorsement may provide verification acceptable to the board of practical experience hours worked as a pharmacist in another state within the United States in lieu of precensure intern hours in order to meet the practical experience requirement.

I. A pharmacy intern shall notify the board in writing of any change in address of record within 14 days of such change.

**18VAC110-20-105. Renewal and reinstatement of registration.**

A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee and renewal form. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.

B. A pharmacy technician who fails to renew his registration by the expiration date may renew his registration at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and ~~proof~~ attestation of having obtained required continuing education.

C. A pharmacy technician who fails to renew his registration for more than one year following expiration and who wishes to reinstate such registration shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement. Conducting tasks associated with a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.

D. A person who fails to reinstate a pharmacy technician registration within five years of expiration, shall not be eligible for reinstatement and shall repeat an approved

training program and repeat and pass the examination, or hold current PTCB certification, before applying to be reregistered.

Part VII

Prescription Order and Dispensing Standards

**18VAC110-20-270. Dispensing of prescriptions; certification of completed prescriptions; supervision of pharmacy technicians.**

A. In addition to the acts restricted to a pharmacist in § 54.1-3320 A of the Code of Virginia, a pharmacist shall provide personal supervision of compounding of extemporaneous preparations by pharmacy technicians.

B. A pharmacist shall determine the number of pharmacy interns, pharmacy technicians, and pharmacy technician trainees he can safely and competently supervise at one time; however, no pharmacist shall supervise more than four persons acting as pharmacy technicians at one time.

C. After the prescription has been prepared and prior to the delivery of the order, ~~the~~ a pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction. If more than one pharmacist is involved in verifying the accuracy of the prescription product, a record shall be maintained identifying the date of dispensing, each pharmacist involved in the process, and the individual task for which he is responsible for verifying the accuracy. Such record showing verification of accuracy shall be maintained on a pharmacy record and, if necessary, an alternate record consistent with 18VAC110-20-255 for the required time period of two years, unless otherwise specified in regulation. If the dispensing involves central or remote processing, records of pharmacist verification shall be maintained in a manner consistent with 18VAC110-20-276 and 18VAC110-20-515.

D. If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

E. If a pharmacist determines from a prescriber or by other means, including the use of his professional judgment, that a prescription presented for dispensing is a forgery, the pharmacist shall not return the forged prescription to the person presenting it. The forged prescription may be given to a law-enforcement official investigating the forgery; or it shall be retained for a minimum of 30 days before destroying it, in the event it is needed for an investigative or other legitimate purpose.

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## Part X Unit Dose Dispensing Systems

### **18VAC110-20-420. Unit dose dispensing system.**

A. A unit dose drug dispensing system may be utilized for the dispensing of drugs to patients in a hospital or long-term care facility. The following requirements shall apply regardless of whether licensed or unlicensed persons administer medications:

1. Any equipment outside the pharmacy used to house drugs to be administered in a unit dose system shall be fitted with a locking mechanism and locked at all times when unattended.
2. A signed order by the prescribing practitioner shall accompany the requests for a Schedule II drug, except that a verbal order for a hospital patient for a Schedule II controlled substance may be transmitted to a licensed nurse or pharmacist at the hospital who shall promptly reduce the order to writing in the patient's chart. Such an order shall be signed by the prescriber within 72 hours.
3. Properly trained personnel may transcribe the prescriber's drug orders to a patient profile card, fill the medication carts, and perform other such duties related to a unit dose distribution system provided these are done under the personal supervision of a pharmacist.
4. All dosages and drugs shall be labeled with the drug name, strength, lot number and expiration date when indicated.
5. The patient's individual drug drawer or tray shall be labeled with in a manner to identify the patient's name patient and his location without violating health privacy laws.
6. All unit dose drugs intended for internal use shall be maintained in the patient's individual drawer or tray unless special storage conditions are necessary.
7. A back-up dose of a drug of not more than one dose unit may be maintained in the patient's drawer, tray, or special storage area provided that the dose is maintained in the patient's drawer, tray, or special storage area with the other drugs for that patient.
8. A record shall be made and maintained within the pharmacy for a period of one year showing:
  - a. The date of filling of the drug cart;
  - b. The location of the drug cart;
  - c. The initials of the person who filled the drug cart; and
  - d. The initials of the pharmacist checking and certifying the contents of the drug cart in accordance with the provisions in 18VAC110-20-270 ~~B~~ C.
9. A patient profile record or medication card will be accepted as the dispensing record of the pharmacy for unit dose dispensing systems only, subject to the following conditions:

- a. The record of dispensing must be entered on the patient profile record or medication card at the time the drug drawer or tray is filled.

- b. In the case of Schedule II through V drugs, after the patient profile record or medication card has been completed, the card must be maintained for two years.

- c. In the case of the computer-based distribution system, a uniformly maintained "fill list" or other document containing substantially the same information may be accepted as the dispensing record for Schedule II through VI drugs. Records of disposition/administration for floor stock drugs as provided in 18VAC110-20-460 B will be accepted for drugs distributed as floor stock.

B. In providing unit dose systems to hospitals or long-term care facilities where only those persons licensed to administer are administering drugs, the pharmacy shall dispense not more than a seven-day supply of a drug in a solid, oral dosage form at any one given time.

C. In addition to the requirements listed in subsection A of this section, the following requirements apply to those long-term care facilities in which unlicensed persons administer drugs:

1. The pharmacy providing medications to such facility shall dispense no more than a 72-hour supply of drugs in a solid, oral dosage form at any one given time.

2. The pharmacy shall provide to persons administering medications training specific to the particular unit dose system being used.

3. The pharmacy shall provide a medication administration record to the facility listing each drug to be administered with full dosage directions to include no abbreviations.

4. The drugs in a unit dose system shall be placed in slots within a drawer labeled or coded to indicate time of administration.

### **18VAC110-20-425. Robotic pharmacy systems.**

~~A~~ Consistent with 18VAC110-20-420, a pharmacy providing services to a hospital or a long-term care facility using a unit dose dispensing system may operate and operating a robotic pharmacy system dispensing that dispenses drugs in bar-coded unit dose, bar-coded drugs and, or compliance packaging is exempted from 18VAC110-20-270 C, provided the accuracy of the final dispensed prescription product complies with a written quality assurance plan and requirements of this chapter. The following requirements for operation of a robotic pharmacy system shall apply:

1. Pharmacists shall review for accuracy and appropriateness of therapy all data entry of prescription orders into the computer operating the system.

2. The packaging, repackaging, stocking and restocking of the robotic pharmacy system shall be performed by pharmacy technicians or pharmacists.

3. Pharmacists shall verify and check for the accuracy of all drugs packaged or repackaged for use by the robot by a visual check of both labeling and contents prior to stocking the drugs in the robotic pharmacy system. A repackaging record shall be maintained in accordance with 18VAC110-20-355 A, and the verifying pharmacist shall initial the record. Packaging and labeling, including the appropriate beyond-use date, shall conform to requirements of this chapter and current USP-NF standards.

4. A written policy and procedure must be maintained and shall include at a minimum, procedures for ensuring:

- a. Accurate packaging and repackaging of all drugs for use in the robotic pharmacy system, to include properly labeled barcodes, and method for ensuring pharmacist verification of all packaged and repacked drugs compliant with this chapter;
- b. Accurate stocking and restocking of the robotic pharmacy system;
- c. Removing expired drugs;
- d. Proper handling of drugs that may be dropped by the robotic pharmacy system;
- e. Performing routine maintenance of robotic pharmacy system as indicated by manufacturer's schedules and recommendations;
- f. Accurate dispensing of drugs via robotic pharmacy system for cart fills, first doses, and cart fill updates during normal operation and during any scheduled or unscheduled downtime;
- g. Appropriately investigating, identifying and correcting sources of discrepancies or errors associated with the robotic pharmacy system; and
- h. Maintaining quality assurance reports.

5. Pharmacists shall perform a daily random check of medications or compliance packaging picked by the robot for 5.0% of all patients' bins and 5.0% of all first doses or cart updates. Documentation of this check shall include the pharmacist's initials for each medication checked and a description of all discrepancies found.

6. All manual picks shall be checked by pharmacists.

7. If the robot picks an incorrect medication, the pharmacy shall immediately institute a 100% check of all ~~patients' bins or~~ doses or compliance packages and shall immediately report the error to the board. The 100% check procedure shall continue until such time as the pharmacy provides documentation to the board showing that the cause of the error has been determined and addressed and that the robot is no longer making errors, and the board allows the pharmacy to return to a reduction in checking.

8. Quarterly quality assurance reports demonstrating the accuracy of the robot shall be maintained. At a minimum, these reports shall include:

a. A summary indicating the date and description of all discrepancies that include but are not limited to discrepancies involving the packaging, repackaging and dispensing of drugs via the robotic pharmacy system found during that quarter plus a cumulative summary since initiation of the robotic pharmacy system.

b. The total number of doses packaged or compliance packages prepared for the robotic pharmacy system and total number of doses or compliance packages picked by the robot during the quarter.

c. The total number of doses or compliance packages picked by the robot that were checked in conducting the ~~5.0% patient bin check, 5.0% cart updates check, and 5.0% first dose check~~ checks.

d. Dates and time associated with any scheduled or unanticipated downtime with an explanation of the problem to include the time span of the downtime and the resolution.

9. All unanticipated downtime shall be immediately reported to the board.

10. All records required by this section shall be maintained at the address of the pharmacy for a minimum of two years. Records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

**18VAC110-20-710. Requirements for storage and security for controlled substances registrants.**

A. Drugs shall be stored under conditions which meet USP-NF specifications or manufacturers' suggested storage for each drug.

B. Any drug which has exceeded the expiration date shall not be administered; it shall be separated from the stock used for administration and maintained in a separate, locked area until properly disposed.

C. If a controlled substances registrant wishes to dispose of unwanted or expired Schedule II through VI drugs, he shall transfer the drugs to another person or entity authorized to possess and to provide for proper disposal of such drugs.

D. Drugs shall be maintained in a lockable cabinet, cart, device or other area which shall be locked at all times when not in use. The keys or access code shall be restricted to the supervising practitioner and persons designated access in accordance with 18VAC110-20-700 C.

E. In a facility not staffed 24 hours a day, the drugs shall be stored in a fixed and secured room, cabinet or area which has a security device for the detection of breaking which meets the following conditions:

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1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.
2. The installation and device shall be based on accepted alarm industry standards.
3. The device shall be maintained in operating order, have an auxiliary source of power, be monitored in accordance with accepted industry standards, be maintained in operating order; and shall be capable of sending an alarm signal to the monitoring entity if breached and the communication line is not operational.
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 only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.
6. An alarm system is not required for researchers, animal control officers, humane societies, alternate delivery sites as provided in 18VAC110-20-275, ~~or~~ emergency medical services agencies stocking only intravenous fluids with no added drug, and teaching institutions possessing only Schedule VI drugs.

VA.R. Doc. No. R13-3624; Filed July 22, 2013, 9:59 a.m.

## BOARD OF PHYSICAL THERAPY

### Fast-Track Regulation

**Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-131).**

**Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.**

**Public Hearing Information: No public hearings are scheduled.**

**Public Comment Deadline: September 11, 2013.**

**Effective Date: September 26, 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.**

**Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of the Board of Physical Therapy, including the responsibility to promulgate regulations, which are reasonable and necessary to administer effectively the regulatory system.**

The mandate for regulations setting criteria for continuing education is found in § 54.1-3480.1 of the Code of Virginia, which states that as a prerequisite to renewal of a license or reinstatement of a license, each physical therapist shall be required to take biennial courses relating to physical therapy as approved by the board. The board shall prescribe criteria

for approval of courses of study and credit hour requirements. Further, § 54.1-3474 of the Code of Virginia requires the board to promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants and permits the board to approve persons who provide or accredit programs to ensure continuing competency.

**Purpose:** The proposed regulatory action is intended to ease the burden of obtaining required hours of continuing education by accepting health care organizations that are deemed in compliance with the Centers for Medicare and Medicaid Services (CMS) but do not necessarily maintain accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). The goal is to eliminate any requirement that is not essential to ensure that licensees are remaining current in their knowledge and practice skills for protection of the health and safety of their patients.

**Rationale for Using Fast-Track Process:** The amendment is less restrictive and not controversial. The board is responding to a petition for rulemaking; all comments on the petition were supportive.

**Substance:** The amendment to 18VAC112-20-131 will approve continuing education courses offered by health care organizations that are accredited by a national accrediting organization granted authority by CMS to assure compliance with Medicare conditions of participation, rather than only those accredited by the JCAHO.

**Issues:** More inclusive and less burdensome rules for continuing education facilitate completion of renewal requirements, which is advantageous to the public and the licensees. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

**Summary of the Proposed Amendments to Regulation.** Under the current regulations, the Board of Physical Therapy (Board) accepts continuing education courses from a variety of organizations. If the provider (or approving organization) is a health care organization, the current regulations require that the organization be accredited by the Joint Commission on Accreditation of Healthcare Organizations. The Board proposes to instead accept courses from (or approved by) health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation.

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

**Estimated Economic Impact.** These regulations require that physical therapists and physical therapist assistants complete at least 30 contact hours of continuing learning activities every two years in order to maintain active licensure. At least

15 of those hours for physical therapists and 10 of those hours for physical therapist assistants must be in face-to-face courses. The current regulations require that the courses be 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;
- f. The American Medical Association - Category I Continuing Medical Education course; and
- g. The National Athletic Trainers Association.

The Board proposes to delete the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and replace it with a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation.

A petition for rulemaking was filed by a physical therapist on behalf of Sentara health care system which is moving to accreditation by Det Norske Veritas (DNV) rather than JCAHO. Therefore, recognizing only JCAHO prohibits the Board from accepting continuing education courses offered by Sentara entities for their employees. DNV is a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services (CMS) to assure compliance with Medicare conditions of participation.<sup>1</sup> Other accrediting bodies that have been deemed as meeting CMS standards for accreditation are also excluded under the current language. By enabling the Board to approve courses from additional entities which are deemed to meet the same standard of quality will reduce costs for some physical therapists and physical therapist assistants without presumably compromising the quality of training. For example, the Department of Health Professions believes the proposed change will enable some physical therapists and physical therapist assistants to obtain qualifying continuing education at no cost as part of in-service training that would not have qualified as hours toward license renewal under the current regulations. Therefore the proposed amendment will likely provide a net benefit.

**Businesses and Entities Affected.** There are 6,090 licensed physical therapists and 2,460 licensed physical therapist assistants in the Commonwealth.<sup>2</sup> Most work in health care organizations or school systems. Most of the businesses would qualify as small businesses.

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed amendments are unlikely to significantly affect total employment. There may be a small shift in demand among providers of continuing education; but this would not likely affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendment may cause a small shift in demand among providers of continuing education; this may cause a moderate increase in value for those that receive greater demand and a moderate decrease in value for those that receive less demand. Some physical therapists, physical therapist assistants, and their employers will benefit from potentially reduced continuing education costs.

**Small Businesses: Costs and Other Effects.** The proposed amendments will not increase costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments will not adversely impact small businesses as a whole. Some providers of continuing education may lose demand for their services to others, while potential costs for those that employ physical therapists and physical therapist assistants may be reduced.

**Real Estate Development Costs.** The proposed amendments will 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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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.

<sup>1</sup> Source: Centers for Medicare and Medicaid Services

<sup>2</sup> Source: Department of Health Professions

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Agency's Response to Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC112-20, Regulations Governing the Practice of Physical Therapy, relating to the listing of approved continuing education providers.

Summary:

*The regulatory action amends the list of approved sponsors of continuing education to include health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation, rather than only those organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations.*

**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 20 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants shall be in Type 1 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)~~ a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;
- f. The American Medical Association - Category I Continuing Medical Education course; and

g. The National Athletic Trainers Association.

2. No more than 10 of the contact hours required for physical therapists and 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 tool was taken. A physical therapist who can document that he has met the standard of the PRT may receive 20 hours of Type 1 credit for the biennium in which the assessment 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.

VA.R. Doc. No. R13-3602; Filed July 12, 2013, 10:17 a.m.



**BOARD OF PSYCHOLOGY****Fast-Track Regulation**

**Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-30, 18VAC125-20-41, 18VAC125-20-42, 18VAC125-20-54, 18VAC125-20-65, 18VAC125-20-80).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** Catherine Chappell, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email catherine.chappell@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 Psychology the authority to promulgate regulations to administer the regulatory system. Sections 54.1-3605 and 54.1-3606 of the Code of Virginia authorize the board to promulgate regulations establishing the requirements for licensure of clinical psychologists that shall include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders and stipulating that any person engaged in the practice of applied psychology, school psychology, or clinical psychology shall hold a license.

**Purpose:** The purpose of the amended regulation is to clarify and simplify requirements for applicants and residents seeking licensure as clinical psychologists. Changes such as allowing group supervision to be substituted for some of the hours of individual supervision will facilitate completion of practical experience within a pre-doctoral practicum without compromising the training necessary to ensure that applicants have the competency to provide safe, effective clinical services to clients. Reducing the years in active practice as a qualification for licensure by endorsement will benefit applicants who are have demonstrated competency to practice in other states.

**Rationale for Fast-Track Process:** The amendments provide clarifying or less restrictive regulation and have unanimous approval of the Board of Psychology. The board does not expect the regulatory action to be controversial.

**Substance:** Amendments clarify requirements for applicants and students of criteria for licensure and include: (i) deletion of the requirement for a transcript in applying for licensure if one was already submitted for approval of a residency; (ii) deletion of the requirement for a notarized affidavit on the application; (iii) reduction in the clinical practice required for licensure by endorsement (24 months in past 60 months versus five of the previous six years) if the applicant does not

have at least 10 years of practice; (iv) allowance for use of group supervision in pre-doctoral practicum hours; and (v) deletion of the requirement for repeat examinations.

**Issues:** There are no disadvantages to the public. The reduction in the regulatory burden for applicants and residents will facilitate licensure for qualified individuals who will be available to provide clinical services to the public. There are no advantages or disadvantages to the agency or 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 part of the regulatory reform initiative, the Board of Psychology (Board) proposes to amend its Regulations Governing the Practice of Psychology to: 1) delete the requirement that a transcript be submitted with each licensure application so long as the transcript submitted for registration of supervision shows all coursework completed, 2) reduce the clinical practice requirement for licensure by endorsement, 3) allow applicants for licensure by examination or endorsement to attest to having read, and having agreed to comply with, current Virginia laws governing the practice of psychology and 4) allow individuals who are completing their educational requirements to be licensed in clinical psychology to substitute two hours of group supervision for one hour or individual supervision for up to half of their required number of individually supervised practice hours.

Result of Analysis. Benefits likely outweigh costs for these proposed regulations.

Estimated Economic Impact. Currently, applicants for licensure by examination must submit official transcripts documenting the applicants completion of the degree program and coursework requirements. Currently, individuals who are registering whom will be supervising their residency must also submit official transcripts. The Board now proposes to eliminate the need to submit official transcripts when applying for licensure so long as all coursework is reflected on the transcript that was previously submitted for registration of supervision. Individuals who are applying for licensure will benefit from this change as it will save them the time and expense of submitting some paperwork twice.

Current regulations require applicants for licensure by endorsement to provide evidence of clinical practice during five of the last six years immediately preceding application. The Board proposes to change this requirement so that applicants will only have to provide evidence of clinical practice for 24 of the 60 months before application. This change will benefit applicants as they will qualify for licensure by endorsement with less recent experience (so more interested individuals will likely meet the active practice requirement). Applicants for licensure will still have

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to show that they have competently practiced their profession in the political jurisdiction they are coming from, so no future clients of these individuals are likely to be harmed on account of this change.

Currently, both applicants for licensure by examination and licensure by endorsement have to submit a notarized affidavit certifying that they have read, and agree to follow, the laws and regulations that govern the practice of psychology in the Commonwealth. Since notaries cannot and do not certify that applicants have read what they are saying they read (notaries just certify that the individual listed on the affidavit is the person signing it), the Board proposes to only require that applicants affirm on their application that they have read and will follow all relevant laws. No entity is likely to incur costs on account of this proposed change. Applicants will benefit from this change as they will no longer have to take the time or pay the fee (likely less than \$5) associated with hiring the services of a notary public.

Current regulations require applicants for licensure as clinical psychologists to complete, among other things, a 1,500 hour supervised residency. Individuals who wish to apply pre-doctoral supervised experience to their supervised residency must meet certain requirements. Among these requirements is that individuals must have had a minimum of one hour of individual face-to-face supervision for every 8 hours of total supervision. The Board proposes to allow supervised individuals to substitute 2 hours of group supervision (up to five individuals in a group) for each hour of individual supervision for up to half the required hours of individual supervision. This change will benefit individuals who are working to fulfill licensure requirements as well as the doctoral programs that offer supervision because it will give all parties greater flexibility to structure supervision in the most individually efficient manner. No individual is likely to incur additional costs on account of this change because it is only an additional option for meeting supervision requirements.

**Businesses and Entities Affected.** The Department of Health Professions (DHP) reports that there are 2,895 licensed clinical psychologists, 41 licensed applied psychologists, 105 licensed school psychologists and 341 licensed school psychologists-limited in the Commonwealth. All of these entities, as well as any applicants for licensure and individuals completing their supervised experience requirements, will be affected by these proposed regulations.

**Localities Particularly Affected.** No localities will be particularly affected by these proposed regulations.

**Projected Impact on Employment.** As this regulatory proposal will likely make it easier for individuals licensed in other political jurisdictions to qualify for licensure in Virginia, the number of individuals working as psychologists in the Commonwealth may increase.

**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 additional expense on account of these regulatory changes.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small business is likely to incur any additional expense on account of these regulatory changes.

**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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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 Psychology concurs with the analysis of the Department of Planning and Budget on amendments to 18VAC125-20, Regulations Governing the Practice of Psychology, relating to periodic review of regulations.

**Summary:**

*As part of the Governor's Regulatory Reform Initiative, the board is proposing amendments to (i) delete the requirement that a transcript be submitted with each licensure application as long as the transcript submitted for registration of supervision shows all coursework completed; (ii) delete the requirement for a notarized affidavit on the application; (iii) reduce the clinical practice requirement for licensure by endorsement; (iv) allow use of group supervision in pre-doctoral practicum*

hours; and (v) remove the provisions for repeat examinations.

**18VAC125-20-30. Fees required by the board.**

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists- limited
1. Registration of residency (per residency request)	\$50	--
2. Add or change supervisor	\$25	--
3. Application processing and initial licensure	\$200	\$85
4. Annual renewal of active license	\$140	\$70
5. Annual renewal of inactive license	\$70	\$35
6. Late renewal	\$50	\$25
7. Verification of license to another jurisdiction	\$25	\$25
8. Duplicate license	\$5	\$5
9. Additional or replacement wall certificate	\$15	\$15
10. Returned check	\$35	\$35
11. Reinstatement of a lapsed license	\$270	\$125
12. Reinstatement following revocation or suspension	\$500	\$500

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

**18VAC125-20-41. Requirements for licensure by examination.**

A. Every applicant for examination for licensure by the board shall:

1. Meet the education requirements prescribed in 18VAC125-20-54, 18VAC125-20-55, or 18VAC125-20-56 and the experience requirement prescribed in

18VAC125-20-65 as applicable for the particular license sought; and

2. Submit the following:

- a. A completed application on forms provided by the board;
- b. A completed residency agreement or documentation of having fulfilled the experience requirements of 18VAC125-20-65;
- c. The application processing fee prescribed by the board;
- d. Official transcripts documenting the graduate work completed and the degree awarded; transcripts previously submitted for registration of supervision do not have to be resubmitted unless additional coursework was subsequently obtained. Applicants who are graduates of institutions that are not regionally accredited shall submit documentation from an accrediting agency acceptable to the board that their education meets the requirements set forth in 18VAC125-20-54, 18VAC125-20-55 or 18VAC125-20-56; and
- e. Verification of any other health or mental health professional license or certificate ever held in another jurisdiction.

B. In addition to fulfillment of the education and experience requirements, each applicant for licensure by examination must achieve a passing score on the Examination for Professional Practice of Psychology.

C. Every applicant shall ~~submit an affidavit of~~ attest to having read and agreed to comply with the current standards of practice and laws governing the practice of psychology in Virginia.

**18VAC125-20-42. Prerequisites for licensure by endorsement.**

Every applicant for licensure by endorsement shall submit:

1. A completed application;
2. The application processing fee prescribed by the board;
3. An affidavit attestation of having read and agreed to comply with the current Standards of Practice and laws governing the practice of psychology in Virginia;
4. Verification of all other health and mental health professional licenses or certificates ever held in any jurisdiction. In order to qualify for endorsement, the applicant shall not have surrendered a license or certificate while under investigation and shall have no unresolved action against a license or certificate;
5. A current report from the ~~Healthcare Integrity and Protection Data Bank (HIPDB)~~ and a current report from the National Practitioner Data Bank; and
6. Further documentation of one of the following:
  - a. A current listing in the National Register of Health ~~Services Providers in Psychology~~ Service Psychologists;

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b. Current diplomate status in good standing with the American Board of Professional Psychology in a category comparable to the one in which licensure is sought;

c. Ten years of active licensure in a category comparable to the one in which licensure is sought, with an appropriate degree as required in this chapter documented by an official transcript; or

d. If less than 10 years of active licensure, documentation of current psychologist licensure in good standing obtained by standards substantially equivalent to the education, experience and examination requirements set forth in this chapter for the category in which licensure is sought as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency or a copy of the regulations in effect at the time of initial licensure and the following:

(1) Documentation of post-licensure active practice for at least ~~five~~ 24 of the last ~~six years~~ 60 months immediately preceding licensure application;

(2) Verification of a passing score on the Examination for Professional Practice of Psychology as established in Virginia for the year of that administration; and

(3) Official transcripts documenting the graduate work completed and the degree awarded in the category in which licensure is sought.

## **18VAC125-20-54. Education requirements for clinical psychologists.**

A. The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which was accredited by the APA in clinical or counseling psychology within four years after the applicant graduated from the program, or shall meet the requirements of subsection B of this section.

B. If the applicant does not hold a doctorate from an APA accredited program, the applicant shall hold a doctorate from a professional psychology program which documents that it offers education and training which prepares individuals for the practice of clinical psychology as defined in § 54.1-3600 of the Code of Virginia and which meets the following criteria:

1. The program is within an institution of higher education accredited by an accrediting agency recognized by the United States Department of Education or publicly recognized by the Association of Universities and Colleges of Canada as a member in good standing. Graduates of programs that are not within the United States or Canada must provide documentation from an acceptable credential evaluation service which provides information that allows the board to determine if the program meets the requirements set forth in this chapter.

2. The program shall be recognizable as an organized entity within the institution.

3. The program shall be an integrated, organized sequence of study with an identifiable psychology faculty and a psychologist directly responsible for the program, and shall have an identifiable body of students who are matriculated in that program for a degree. The faculty shall be accessible to students and provide them with guidance and supervision. The faculty shall provide appropriate professional role models and engage in actions that promote the student's acquisition of knowledge, skills and competencies consistent with the program's training goals.

4. The program shall encompass a minimum of three academic years of full-time graduate study or the equivalent thereof.

5. The program shall include a general core curriculum containing a minimum of three or more graduate semester hours or five or more graduate quarter hours in each of the following substantive content areas.

a. Biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, health psychology, pharmacology, neuroanatomy).

b. Cognitive-affective bases of behavior (e.g., learning theory, cognition, motivation, emotion).

c. Social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, community and preventive psychology, multicultural issues).

d. Psychological measurement.

e. Research methodology.

f. Techniques of data analysis.

g. Professional standards and ethics.

6. The program shall include a minimum of at least three or more graduate semester credit hours or five or more graduate quarter hours in each of the following clinical psychology content areas:

a. Individual differences in behavior (e.g., personality theory, cultural difference and diversity).

b. Human development (e.g., child, adolescent, geriatric psychology).

c. Dysfunctional behavior, abnormal behavior or psychopathology.

d. Theories and methods of intellectual assessment and diagnosis.

e. Theories and methods of personality assessment and diagnosis including its practical application.

f. Effective interventions and evaluating the efficacy of interventions.

~~C. Applicants who graduated from programs which meet the criteria set forth under subsection A or B of this section shall submit documentation of having successfully completed practicum experiences in assessment and diagnosis,~~

psychotherapy, consultation and supervision. The practicum shall include a minimum of nine graduate semester hours or 15 or more graduate quarter hours or equivalent in appropriate settings to ensure a wide range of supervised training and educational experiences.

D. An applicant for a clinical license may fulfill the residency requirement of 1,500 hours, or some part thereof, as required for licensure in 18VAC125-20-65 B, in the pre-doctoral practicum supervised experience that meets the following standards:

1. The supervised professional experience shall be part of an organized sequence of training within the applicant's doctoral program, which meets the criteria specified in subsections A or B of this section.
2. The supervised experience shall include face-to-face direct client services, service-related activities, and supporting activities.
  - a. "Face-to-face direct client services" means treatment/intervention, assessment, and interviewing of clients.
  - b. "Service-related activities" means scoring, reporting or treatment note writing, and consultation related to face-to-face direct services.
  - c. "Supporting activities" means time spent under supervision of face-to-face direct services and service-related activities provided on-site or in the trainee's academic department, as well as didactic experiences, such as laboratories or seminars, directly related to such services or activities.
3. In order for pre-doctoral practicum hours to fulfill the all or part of the residency requirement, the following shall apply:
  - a. Not less than one-quarter of the hours shall be spent in providing face-to-face direct client services;
  - b. Not less than one-half of the hours shall be in a combination of face-to-face direct service hours and hours spent in service-related activities; and
  - c. The remainder of the hours may be spent in a combination of face-to-face direct services, service-related activities, and supporting activities.
4. A minimum of one hour of individual face-to-face supervision shall be provided for every eight hours of supervised professional experience spent in direct client contact and service-related activities.
5. Two hours of group supervision with up to five practicum students may be substituted for one hour of individual supervision. In no case shall the hours of individual supervision be less than one-half of the total hours of supervision.
6. The hours of pre-doctoral supervised experience reported by an applicant shall be certified by the program's

director of clinical training on a form provided by the board.

## **18VAC125-20-65. Supervised experience.**

### **A. Internship requirement.**

1. Candidates for clinical psychologist licensure shall have successfully completed an internship that is either accredited by APA, APPIC, or the Association of State and Provincial Psychology Boards/National Register of Health Service Providers in Psychology Psychologists, or one that meets equivalent standards.

2. Candidates for school psychologist licensure shall have successfully completed an internship accredited by the APA, APPIC, or NASP or one that meets equivalent standards.

### **B. Residency requirement.**

1. Candidates for clinical or school psychologist licensure shall have successfully completed a residency consisting of a minimum of 1,500 hours in a period of not less than 12 months and not to exceed three years of supervised experience in the delivery of clinical or school psychology services acceptable to the board, or the applicant may request approval to begin a residency.

2. Supervised experience obtained in Virginia without prior written board approval will not be accepted toward licensure. Candidates shall not begin the residency until after completion of the required degree as set forth in 18VAC125-20-54 or 18VAC125-20-56. An individual who proposes to obtain supervised post-degree experience in Virginia shall, prior to the onset of such supervision, submit a supervisory contract along with the application package and pay the registration of supervision fee set forth in 18VAC125-20-30.

3. There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.

4. Residents may not refer to or identify themselves as applied psychologists, clinical psychologists, or school psychologists; independently solicit clients; bill for services; or in any way represent themselves as licensed psychologists. Notwithstanding the above, this does not preclude supervisors or employing institutions for billing for the services of an appropriately identified resident. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in Psychology," in the licensure category in which licensure is sought.

5. Supervision shall be provided by a psychologist licensed to practice in the licensure category in which the resident is seeking licensure.

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6. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.

7. At the end of the residency training period, the supervisor or supervisors shall submit to the board a written evaluation of the applicant's performance.

8. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervisors.

C. For a clinical psychologist license, a candidate may submit evidence of having met the supervised experience requirements in a pre-doctoral practicum as specified in 18VAC125-20-54 D in substitution for all or part of the 1,500 residency hours specified in this section. If the supervised experience hours completed in a practicum do not total 1,500 hours, a person may fulfill the remainder of the hours by meeting requirements specified in subsection B of this section.

D. Candidates for clinical psychologist licensure shall provide documentation that the internship and residency included appropriate emphasis and experience in the diagnosis and treatment of persons with moderate to severe mental disorders.

## Part III Examinations

### **18VAC125-20-80. General examination requirements.**

A. An applicant for clinical or school psychologist licensure enrolled in an approved residency training program required in 18VAC125-20-65 who has met all requirements for licensure except completion of that program shall be eligible to take the national written examination.

B. A candidate approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the candidate has not taken the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time.

C. The board shall establish passing scores on the examination.

~~D. Candidates who fail an examination may be reexamined once within a 12-month period without reapplying.~~

~~E. Candidates who fail any examination twice shall wait at least one year between the second failure and the next reexamination.~~

VA.R. Doc. No. R13-3736; Filed July 22, 2013, 10:01 a.m.

## **BOARD OF SOCIAL WORK**

### **Fast-Track Regulation**

**Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10,**

**18VAC140-20-40, 18VAC140-20-45, 18VAC140-20-50, 18VAC140-20-51, 18VAC140-20-60, 18VAC140-20-70, 18VAC140-20-100, 18VAC140-20-106).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 11, 2013.

Effective Date: September 26, 2013.

Agency Contact: Catherine Chappell, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email catherine.chappell@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of the Board of Social Work, including the responsibility to promulgate regulations, and § 54.1-3705 of the Code of Virginia provides for the specific powers and duties of the board.

Purpose: The amendments are in response to the Governor's Regulatory Reform Initiative and are intended to ease some of the burdens of applying for licensure and obtaining supervised experience. The goal is to eliminate any requirement that is not necessary to ensure that the board is licensing qualified individuals for protection of health and safety. Several problems encountered with applications, registration of supervision, and receiving credit for hours of supervised experience have been addressed during the review of regulations. Additionally, the unnecessary burden of obtaining and maintaining documentation of category II continuing education hours has been eliminated.

Rationale for Using Fast-Track Process: The amendments are less restrictive or clarifying, and they are not controversial. The board was responsive to comments contributed during the Notice of Periodic Review and did not include any changes that could be considered more burdensome or were not fully supported.

Substance: Amendments are adopted pursuant to the Governor's Regulatory Reform Initiative to: (i) allow certain electronic face-to-face supervision; (ii) facilitate online submission of application packages; (iii) permit practice in an exempt setting to count towards the active practice requirement for licensure by endorsement; (iv) accept qualified practitioners from out of state to provide supervision; (v) list the required examinations in the regulation; and (vi) eliminate required documentation of category II continuing education.

Issues: The primary advantages to the public are more timely resolution of applications that may be submitted electronically and less burdensome rules for supervision that may facilitate completion of licensure requirements. There are no disadvantages to the public. The advantage to the Commonwealth is facilitation of online applications.

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. The Board of Social Work (Board) proposes to amend its Regulations Governing the Practice of Social Work to 1) allow supervision through the use of real-time technology that allows visual contact between supervisors and supervisees, 2) facilitate online application submission, 3) permit practice in an exempt setting to count toward the active practice requirements for licensure by endorsement, 4) allow qualified individuals from other states to provide supervision and 5) eliminate required documentation for category II continuing education.

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

Estimated Economic Impact. Current regulations require that both clinical social workers and social workers who are seeking licensure complete a certain number of supervised experience hours with a set number of those hours being supervised face-to-face. Current regulations define face-to-face supervision as the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision. The Board now proposes to revise this definition so that individuals who are completing their experience requirements can be supervised face-to-face using real-time visual technology like webcams. All individuals in supervisory relationships are likely to benefit from this change as it gives them greater flexibility to complete the experience requirement in the way that is most efficient for all involved parties. Because hours of face-to-face supervision are not changing, this requirement should remain as effective a means of training as it currently is. Consequently, no entity should be harmed or incur additional costs on account of this change.

Current regulations require that all documents for an application be submitted at once, that they be submitted 90 days before an applicant takes the licensure exam, that the licensure application be notarized and that school transcripts be delivered in the schools original sealed envelope. The Board proposes to eliminate all of these requirements for submission of application so that applications can be submitted online. No entity is likely to incur any additional costs on account of these regulatory changes. Applicants for licensure will benefit from being able to submit their applications electronically which will likely be both cheaper and more efficient.

Current regulations for licensure by endorsement require that applicants provide verification of active licensed practice in another political jurisdiction for 36 of the 60 months immediately prior to application. The Board proposes to also allow active practice in a setting that was exempted from

licensure requirements in the political jurisdiction where they applicant formerly practiced to count toward this active practice requirement so long as the exempt practice was at the same level as the Virginia license being sought. For example, applicants for licensure as licensed clinical social workers would have to have been practicing as clinical social workers in an exempt setting for their exempt experience to count. No entity is likely to incur any costs on account of this regulatory change. Applicants for licensure are likely to benefit from this change as it will increase the likelihood that individuals who have been practicing their craft in another state will qualify for licensure by endorsement in Virginia rather than having to be licensed by examination (which would take longer and be more costly) because their experience accrued in an exempt setting did not count.

Under current regulations individuals who are seeking approval to be supervisors for licensure applicants who are completing their supervised experience requirements must hold an active, unrestricted license as a licensed clinical social worker with at least three years of post-licensure work experience, must have completed the required hours of training in supervision and may not supervise family members or anyone that they have another relationship with (friends, business relationship, etc.). The Board now proposes to also allow unlicensed individuals from other states that do not require licensure to be supervisors so long as they have done the job of a clinical social worker for the required amount of time and have training in supervision. No entity is likely to be harmed or incur any costs on account of this regulatory change. Individuals who wish to act as supervisors, but who have practiced in a state that does not require licensure for clinical social workers, will benefit from this change as it will allow them to work at a job from which they are currently barred. Applicants for licensure in the Commonwealth will likely also benefit as this change may broaden the pool of available supervisors making it somewhat easier or cheaper to get the supervision the applicants require.

Current regulations require licensees who are renewing their licenses to provide documentation proving the completion of both Category I and Category II continuing education (CE). Board staff reports that Category I CE consists of education that is verifiable by transcripts and/or certificates of completion whereas Category II CE is intended to be self-study or independent learning activities which are harder to verify. Consequently, the Board proposes to eliminate the requirement to document Category II CE and instead require licensees to attest that they have completed any claimed activities. No entity is likely to incur any costs on account of this regulatory change. Individuals who are renewing their licenses will likely benefit from this change as they will no longer have to incur costs for documenting Category II CE and getting that documentation to Board staff.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently regulates 5,639 licensed clinical social workers and 460 licensed social

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workers. All of these entities, as well as any individuals who may wish to become licensed in the future, will be affected by these proposed regulations.

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

**Projected Impact on Employment.** The loosening of restrictions such as those on experience for individuals applying to be licensed by endorsement and on allowances for electronic supervision in this regulatory action may slightly increase the number of individuals who are eligible for licensure as licensed clinical social workers and licensed social workers. These actions may increase the pool of individuals who are eligible to practice these professions.

**Effects on the Use and Value of Private Property.** To the extent that a professional license can be considered valuable private property that entitles an individual to work at a job that unlicensed individuals may not, eliminating or loosening some limitations that then make obtaining licensure easier or less costly will likely slightly increase the value of licensees' private property.

**Small Businesses: Costs and Other Effects.** Affected small businesses are unlikely to incur costs on account of these proposed changes.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Affected small businesses are unlikely to incur costs on account of these proposed changes.

**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 Social Work concurs with the analysis of the Department of Planning and Budget on amendments for 18VAC140-20, Regulations Governing the Practice of Social Work, relating to regulatory reform.

**Summary:**

*Amendments are adopted pursuant to the Governor's Regulatory Reform Initiative to (i) allow certain electronic face-to-face supervision; (ii) facilitate online submission of application packages; (iii) permit practice in an exempt setting to count towards the active practice requirement for licensure by endorsement; (iv) accept qualified practitioners from out of state to provide supervision; (v) list the required examinations in the regulation; and (vi) eliminate required documentation of category II continuing education.*

Part I

General Provisions

**18VAC140-20-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Board

Casework

Casework management and supportive services

Clinical social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work which includes specialized advanced courses in human behavior and social environment, social policy, research, clinical practice with individuals, families, groups and a clinical practicum which focuses on diagnostic, prevention and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of



mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or the use of technology that provides real-time, visual contact among the individuals involved.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

Part II

Requirements for Licensure

**18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.**

Every applicant for examination for licensure as a licensed clinical social worker shall:

1. Meet the education requirements prescribed in 18VAC140-20-49 and experience requirements prescribed in 18VAC140-20-50.

2. Submit ~~in one package~~ a completed application to the board office to include:

~~a. A completed notarized application;~~

~~b. a.~~ Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;

~~e. b.~~ The application fee prescribed in 18VAC140-20-30;

~~d. c.~~ Official transcript or transcripts ~~in the original sealed envelope~~ submitted from the appropriate institutions of higher education ~~directly to the applicant;~~ and

~~e. d.~~ Documentation of applicant's out-of-state licensure or certification where applicable.

3. Provide evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing clinical social work services in an exempt setting for at least 360 hours per year for two of the past five years.

**18VAC140-20-45. Requirements for licensure by endorsement.**

Every applicant for licensure by endorsement shall submit in one package:

1. A completed application and the application fee prescribed in 18VAC140-20-30.

2. Documentation of social work licensure in good standing obtained by standards required for licensure in another jurisdiction as verified by the out-of-state licensing agency on a board-approved form. Licensure in the other jurisdiction shall be of a comparable type as the licensure that the applicant is seeking in Virginia.

3. Verification of a passing score ~~as established by the board~~ on a board-approved national exam at the level for which the applicant is seeking licensure in Virginia.

4. Verification of active practice in another jurisdiction or practice in an exempt setting at the level for which the applicant is seeking licensure for 36 out of the past 60 months or evidence of supervised experience requirements substantially equivalent to those outlined in 18VAC140-20-50 and 18VAC140-20-60.

5. Certification that the applicant is not the respondent in any pending or unresolved board action in another jurisdiction or in a malpractice claim.

**18VAC140-20-50. Experience requirements for a licensed clinical social worker.**

A. Supervised experience. Supervised post-master's degree experience in all settings obtained in Virginia without prior written board approval will not be accepted toward licensure. ~~Supervision begun before November 26, 2008, that met the requirements of this section in effect prior to that date will be accepted until November 26, 2012.~~

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision:

a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and

b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

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2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability or geography.

a. Experience shall be acquired in no less than two nor more than four years.

b. Supervisees shall average no less than 15 hours per ~~week~~ 40 hours of work experience in face-to-face client contact for a minimum of 1,380 hours. The remaining hours may be spent in ancillary ~~duties and activities~~ services supporting the delivery of clinical social work services.

3. An individual who does not complete the supervision requirement after four years of supervised experience shall submit evidence to the board showing why the training should be allowed to continue.

## B. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least three years of postlicensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a member of his immediate family or provide supervision for anyone with whom he has a dual relationship.

4. The board may consider supervisors from jurisdictions outside of Virginia who provided clinical social work supervision if they have commensurate qualifications but were either (i) not licensed because their jurisdiction did not require licensure or (ii) were not designated as clinical social workers because the jurisdiction did not require such designation.

## C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision; and

7. Maintain documentation, for five years postsupervision, of which clients were the subject of supervision.

D. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

## **18VAC140-20-51. Requirements for licensure by examination as a licensed social worker.**

A. In order to be approved to sit for the board-approved examination for a licensed social worker, an applicant shall:

1. Meet the education requirements prescribed in 18VAC140-20-60 A.

2. Submit ~~in one package~~ a completed application to the board office to include:

~~a. A completed notarized application;~~

~~b. a.~~ The application fee prescribed in 18VAC140-20-30; and

~~e. b.~~ Official transcript or transcripts ~~in the original sealed envelope~~ submitted from the appropriate institutions of higher education ~~directly to the applicant.~~

B. In order to be licensed by examination as a licensed social worker, an applicant shall:

1. Meet the education and experience requirements prescribed in 18VAC140-20-60; and
2. Submit, in addition to the application requirements of subsection A of this section, the following:
  - a. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-60 along with documentation of the supervisor's out-of-state license where applicable. An applicant whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
  - b. Verification of a passing score on the board-approved national examination; and
  - c. Documentation of applicant's out-of-state licensure or certification where applicable.
3. Provide evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing social work services in an exempt setting for at least 360 hours per year for two of the past five years.

**18VAC140-20-60. Education and experience requirements for licensed social worker.**

A. Education. The applicant shall hold a bachelor's or a master's degree from an accredited school of social work. Graduates of foreign institutions must establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council on Social Work Education.

B. Master's degree applicant. An applicant who holds a master's degree may apply for licensure as a licensed social worker without documentation of supervised experience.

C. Bachelor's degree applicant. Supervised experience in all settings obtained in Virginia without prior written board approval will not be accepted toward licensure. ~~Supervision begun before November 26, 2008, that met the requirements of this section in effect prior to that date will be accepted until November 26, 2012.~~

1. Hours. Bachelor's degree applicants shall have completed a minimum of 3,000 hours of supervised post-bachelor's degree experience in casework management and supportive services under supervision satisfactory to the board. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours.

2. Experience shall be acquired in no less than two nor more than four years from the beginning of the supervised experience.

D. Requirements for supervisors.

1. The supervisor providing supervision shall hold an active, unrestricted license as a licensed social worker with a master's degree, or a licensed social worker with a bachelor's degree and at least three years of postlicensure social work experience or a licensed clinical social worker in the jurisdiction in which the social work services are being rendered. If this requirement places an undue burden on the applicant due to geography or disability, the board may consider individuals with comparable qualifications.

2. The supervisor shall:

- a. Be responsible for the social work practice of the prospective applicant once the supervisory arrangement is accepted by the board;
- b. Review and approve the assessment and service plan of a representative sample of cases assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, assessment, length of service and casework method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor. The supervisor shall be available to the applicant on a regularly scheduled basis for supervision. The supervisor will maintain documentation, for five years post supervision, of which clients were the subject of supervision;
- c. Provide supervision only for those casework management and support services activities for which the supervisor has determined the applicant is competent to provide to clients;
- d. Provide supervision only for those activities for which the supervisor is qualified; and
- e. Evaluate the supervisee in the areas of professional ethics and professional competency.

3. Supervision between members of the immediate family (to include spouses, parents, and siblings) will not be approved.

Part III  
Examinations

**18VAC140-20-70. Examination requirement.**

A. An applicant for licensure by the board as a social worker or clinical social worker shall pass a written examination prescribed by the board.

1. The examination prescribed for licensure as a clinical social worker shall be the licensing examination of the Association of Social Work Boards at the clinical level.

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2. The examination prescribed for licensure as a social worker shall minimally be the licensing examination of the Association of Social Work Boards at the bachelor's level.

~~B. The board shall establish passing scores on the written examination.~~

~~C. B.~~ A candidate approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the candidate has not passed the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time.

## **18VAC140-20-100. Licensure renewal.**

A. All licensees shall renew their licenses on or before June 30 of each odd-numbered year and pay the renewal fee prescribed by the board.

B. ~~Beginning with the 2003 renewal, licensees~~ Licensees who wish to maintain an active license shall pay the appropriate fee and document on the renewal form compliance with the continued competency requirements prescribed in 18VAC140-20-105. Newly licensed individuals are not required to document continuing education on the first renewal date following initial licensure.

C. A licensee who wishes to place his license in inactive status may do so upon payment of a fee equal to one-half of the biennial license renewal fee as indicated on the renewal form. No person shall practice social work or clinical social work in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC140-20-110.

D. Each licensee shall furnish the board his current address of record. All notices required by law or by this chapter to be mailed by the board to any such licensee shall be validly given when mailed to the latest address of record given by the licensee. Any change in the address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC140-20-106. Documenting compliance with continuing education requirements.**

A. All licensees in active status are required to maintain original documentation for a period of five years following renewal.

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

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

1. ~~To document completion~~ Documentation of Category I activities ~~licensee shall provide~~ by submission of:

- a. Official transcripts showing credit hours earned; or
- b. Certificates of participation.

2. ~~Documentation~~ Attestation of completion of Category II activities shall be by:

- a. ~~Certificates of participation;~~
- b. ~~Proof of presentations made;~~
- c. ~~Reprints of publications;~~
- d. ~~Letters from educational institutions or agencies approving continuing education program;~~
- e. ~~Letter of confirmation from the school of social work;~~
- f. ~~Official notification from the association that sponsored the item writing workshop or continuing education program;~~
- g. ~~Documentation of attendance at formal staffings shall be by signed affidavit on a form provided by the board;~~  
~~or~~
- h. ~~Identification of the source of material studied, summary of content, and a signed affidavit attesting to completion of the independent study.~~

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

VA.R. Doc. No. R13-3587; Filed July 19, 2013, 12:22 p.m.

## **BOARD OF VETERINARY MEDICINE**

### **Fast-Track Regulation**

**Title of Regulation:** 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-70, 18VAC150-20-75, 18VAC150-20-130, 18VAC150-20-172, 18VAC150-20-220).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** September 11, 2013.

**Effective Date:** September 26, 2013.

**Agency Contact:** Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Veterinary Medicine the authority to promulgate regulations to administer the regulatory system. The specific statutory mandate to regulate veterinary establishments is found in § 54.1-3804 of the Code of Virginia. The specific statutory mandate for licensure in order to practice veterinarian medicine is found in § 54.1-3805 of the Code of Virginia, and the statutory description of the practice of veterinary medicine is found in § 54.1-3800 of the Code of Virginia.

**Purpose:** Licensure and standards of practice for veterinary practitioners and establishments are necessary to protect the health and welfare of animal clients and their owners. The proposed amendments facilitate maintenance of licensure, which ensures continued oversight of veterinary practice.

Rationale for Using Fast-Track Process: The proposed amendments will result in a less restrictive regulation or a revision for clarity without any substantive change. There should be no controversy with any of the changes.

Substance: The only substantive change to the regulation is that licensees and registrants will be able to renew a lapsed license or registration by payment of the renewal and late fee for up to one year after the expiration date. Currently, a licensee or registrant who does not renew within 30 days of expiration has to reinstate his license.

Issues: There are no advantages or disadvantages to the public. Allowing renewal by payment of a late fee for one year after expiration may benefit a very small number of licensees and registrants. There are no advantages or disadvantages to the agency or 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. The Board of Veterinary Medicine (Board) proposes to: 1) allow international conferences of veterinary medicine to be used for continuing education 2) change the required time frame for licensure reinstatement from 30 days after expiration to one year; and 3) revise the requirement for delegation of animal massage.

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

Estimated Economic Impact. International conferences for continuing education. The current regulations specify that national or regional conferences of veterinary medicine are acceptable sponsors for continuing education courses or programs. The Board proposes to add international conferences of veterinary medicine to the list of accepted sponsors. As the Department of Health Professions points out, there are several high quality international conferences that the Board believes should be accepted. For those veterinarians with interest in international conferences, this proposed additional option for continuing education credit will be beneficial. Since there appears to be no cost or reduction in assurance of licensed veterinarians skills associated with the proposed amendment, it should create a net benefit.

Time frame for reinstatement. Currently, a license may be renewed up to 30 days after expiration by payment of a late fee and the renewal fee. After 30 days, the licensee must reinstate with payment of the reinstatement and renewal fees. For veterinarians, the reinstatement fee is \$175. For veterinary technicians, the reinstatement fee is \$50.

The Board proposes to allow late renewal up to one year after expiration; the late fee is \$45 for veterinarians and \$15 for veterinary technicians. Licensees who renew an expired

license between 31 days and one year after the expiration date will therefore realize a saving of \$130 for veterinarians and \$35 for veterinarian technicians.

Reinstatement also requires submission of all documentation showing completion of continuing education. A late renewal only requires that the licensee attest to have completed the continuing education hours. Thus the proposal to allow late renewal up to one year after expiration will also save time in the assembling and transmitting of documents for licensees who renew an expired license between 31 days and one year after the expiration date.

Delegation of animal massage. Under the current regulations, animal massage or physical therapy may be delegated by a veterinarian to persons qualified by training and experience by an order from the veterinarian. The Board does not believe simple animal massage needs to be delegated by an order. Similar to human massage, it may be done in a spa-like facility. However, massage therapy is typically used to treat a medical condition and the Board believes it should continue to be delegated by an order. Therefore, the Board proposes to change the term animal massage to massage therapy in the quoted sentence above. In practice, this change just results in no longer needing a delegation order for simple massage. This will result in a small time savings for veterinary practices.

Businesses and Entities Affected. The proposed amendments affect the 272 restricted veterinary facilities and 736 full-service veterinary facilities in the Commonwealth;<sup>1</sup> all or most of which qualify as small businesses. The proposed amendments also directly affect the 3,771 licensed veterinarians, 1,613 licensed veterinary technicians and 22 registered equine dental technicians in Virginia.

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 proposal to add international conferences of veterinary medicine to the list of accepted sponsors for continuing education courses and programs will increase the likelihood that veterinarians attend international conferences. The proposal to change the required time frame for reinstatement from 30 days after expiration to one year will decrease costs for veterinarians and veterinarian technicians who renew an expired license between 31 days and one year after the expiration date. The proposal to revise the requirement for delegation of animal massage will save a small amount of time for veterinary practices.

Small Businesses: Costs and Other Effects. The proposed amendments will not increase costs for small businesses. The proposal to change the required time frame for reinstatement from 30 days after expiration to one year will decrease costs for small veterinary practices where veterinarians or veterinarian technicians renew an expired license between 31

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days and one year after the expiration date. The proposal to revise the requirement for delegation of animal massage will save a small amount of time for small veterinary practices.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments do not adversely affect small businesses.

**Real Estate Development Costs.** The proposed amendments will 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, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 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.

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<sup>1</sup> Data source: Department of Health Professions

**Agency's Response to Economic Impact Analysis:** The Board of Veterinary Medicine concurs with the analysis of the Department of Planning and Budget for the proposed fast-track action on 18VAC150-20, Regulations Governing the Practice of Veterinary Medicine.

**Summary:**

*The amendments (i) permit international conferences of veterinary medicine to qualify as acceptable sponsors for continuing education, (ii) change the required time frame for license or registration reinstatement from 30 days to one year after expiration, (iii) clarify the requirements for practical training in a preceptorship or externship, and (iv) revise the requirement for delegation of animal massage. This regulatory action is in response to the Governor's Regulatory Reform Initiative.*

## **18VAC150-20-70. Licensure renewal requirements.**

A. Every person licensed by the board shall, by January 1 of every year, submit to the board a completed renewal application and pay to the board a renewal fee as prescribed in 18VAC150-20-100. Failure to renew shall cause the license to lapse and become invalid, and practice with a lapsed license may subject the licensees to disciplinary action by the board. Failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

B. Veterinarians shall be required to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of six hours, of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.

1. Approved continuing education credit shall be given for courses or programs related to the treatment and care of patients and shall be clinical courses in veterinary medicine or veterinary technology or courses that enhance patient safety, such as medical recordkeeping or compliance with requirements of the Occupational Health and Safety Administration (OSHA).

2. An approved continuing education course or program shall be sponsored by one of the following:

- a. The AVMA or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;
- b. Colleges of veterinary medicine approved by the AVMA Council on Education;
- c. ~~National~~ International, national, or regional conferences of veterinary medicine;
- d. Academies or species specific interest groups of veterinary medicine;
- e. State associations of veterinary technicians;
- f. North American Veterinary Technicians Association;
- g. Community colleges with an approved program in veterinary technology;
- h. State or federal government agencies;
- i. American Animal Hospital Association (AAHA) or its constituent and component/branch associations;
- j. Journals or veterinary information networks recognized by the board as providing education in veterinary medicine or veterinary technology; or
- k. An organization or entity approved by the Registry of Approved Continuing Education of the American Association of Veterinary State Boards.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure by examination.

4. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

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

6. Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.

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

C. A licensee who has requested that his license be placed on inactive status is not authorized to perform acts ~~which~~ that are considered the practice of veterinary medicine or veterinary technology and, therefore, shall not be required to have continuing education for annual renewal. To reactivate a license, the licensee is required to submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia equal to the number of years in which the license has not been active for a maximum of two years.

**18VAC150-20-75. Expired license; reinstatement; practice with an expired or lapsed license not permitted.**

A. A license may be renewed up to ~~30 days~~ one year after the expiration date, provided a late fee as prescribed in 18VAC150-20-100 is paid in addition to the required renewal fee.

B. Reinstatement of licenses expired for more than ~~30 days~~ one year shall be at the discretion of the board. To reinstate a license, the licensee shall pay the renewal and reinstatement fees as prescribed in 18VAC150-20-100 and submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia equal to the number of years in which the license has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

**18VAC150-20-130. Requirements for practical training in a preceptorship or externship.**

A. The practical training and employment of qualified students of veterinary medicine or veterinary technology shall be governed and controlled as follows:

1. ~~No A veterinary student shall be qualified to receive practical training unless such student shall be who is~~ duly enrolled and in good standing in a veterinary college or school accredited or approved by the AVMA and in the final year of his training or after completion of an equivalent number of hours as approved by the board may be engaged in a preceptorship or externship. The student shall be engaged in a preceptorship or externship as defined by the board and authorized by his college or school. 2. A veterinary preceptee or extern may perform duties that constitute the practice of veterinary medicine for which he has received adequate instruction by the college or school and only under the on-premises supervision of a licensed veterinarian.

~~3. 2.~~ A veterinary technician preceptee or extern student who is duly enrolled and in good standing in a veterinary technology program accredited or approved by the AVMA may be engaged in a preceptorship or externship. A veterinary technician preceptee or extern may perform duties that constitute the practice of veterinary technology for which he has received adequate instruction by the program and only under the on-premises supervision of a licensed veterinarian or licensed veterinary technician.

B. Prior to allowing a preceptee or extern in veterinary medicine to perform surgery on a patient unassisted by a licensed veterinarian, a licensed veterinarian shall receive written approval from the client.

**18VAC150-20-172. Delegation of duties.**

A. A licensed veterinarian may delegate the administration (including by injection) of ~~schedule~~ Schedule VI drugs to a properly trained assistant under his immediate and direct supervision. The prescribing veterinarian has a specific duty and responsibility to determine that the assistant has had adequate training to safely administer the drug in a manner prescribed. Injections involving anesthetic or chemotherapy drugs, subgingival scaling, or the placement of intravenous catheters shall not be delegated to an assistant.

B. Additional tasks that may be delegated by a licensed veterinarian to a properly trained assistant include but are not limited to the following:

1. Grooming;
2. Feeding;
3. Cleaning;
4. Restraining;
5. Assisting in radiology;
6. Setting up diagnostic tests;
7. Prepping for surgery;

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# Regulations

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8. Dental polishing and scaling of teeth above the gum line (supragingival);
9. Drawing blood samples; or
10. Filling of ~~schedule~~ Schedule VI prescriptions under the direction of a veterinarian licensed in Virginia.

C. A licensed veterinarian may delegate duties electronically, verbally, or in writing to appropriate veterinary personnel provided the veterinarian has physically examined the patient within the previous 36 hours.

D. ~~Animal-massage~~ Massage therapy or physical therapy may be delegated by a veterinarian to persons qualified by training and experience by an order from the veterinarian.

E. The veterinarian remains responsible for the duties being delegated and remains responsible for the health and safety of the animal.

## Part VI Equine Dental Technicians

### **18VAC150-20-220. Requirements for registration as an equine dental technician.**

A. A person applying for registration as an equine dental technician shall provide a recommendation from at least two veterinarians licensed in Virginia who attest that at least 50% of their practice is equine, and that they have observed the applicant within the past five years immediately preceding the attestation and can attest to his competency to be registered as an equine dental technician.

B. The qualifications for registration shall include documentation of one of the following:

1. Current certification from the International Association of Equine Dentistry;
2. Completion of a board-approved certification program or training program;
3. Completion of a veterinary technician program that includes equine dentistry in the curriculum; or
4. Evidence of equine dental practice for at least five years and proof of 16 hours of continuing education in equine dentistry completed within the five years immediately preceding application for registration.

C. In order to maintain an equine dental technician registration, a person shall renew such registration by January 1 of each year by payment of the renewal fee specified in 18VAC150-20-100 and attestation of obtaining 16 hours of continuing education relating to equine dentistry within the past three years.

1. Equine dental technicians shall be required to maintain original documents verifying the date and subject of the continuing education program or course, the number of continuing education hours, and certification of completion from a sponsor. Original documents shall be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall

provide all supporting documentation within 10 days of receiving notification of the audit.

2. Registration may be renewed up to ~~30 days~~ one year after the expiration date, provided a late fee as prescribed in 18VAC150-20-100 is paid in addition to the required renewal fee.

3. Reinstatement of registration expired for more than ~~30 days~~ one year shall be at the discretion of the board. To reinstate a registration, the applicant shall pay the reinstatement fee as prescribed in 18VAC150-20-100 and submit evidence of completion of continuing education hours equal to the number of years in which the registration has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

VA.R. Doc. No. R13-3594; Filed July 12, 2013, 10:17 a.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** **20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (adding 20VAC5-309-205).**

**Statutory Authority:** §§ 12.1-13 and 56-265.30 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** August 26, 2013.

**Agency Contact:** Massoud Tahamtani, Director, Utility and Railroad Safety Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9264, FAX (804) 371-9734, or email [massoud.tahamtani@scc.virginia.gov](mailto:massoud.tahamtani@scc.virginia.gov).

**Summary:**

*The amendments provide the State Corporation Commission increased flexibility in its enforcement of the Underground Utility Damage Prevention Act by including a provision by which the rules may be waived by the commission upon a finding supported by clear and convincing evidence that such a waiver is in the public*



*interest. Since the initial rules were promulgated in 1994, enhanced technology and methods employed in locating underground utility lines and the protection of such lines from excavation damage have given rise to the need for flexibility in the commission's enforcement of the Underground Utility Damage Prevention Act that recognizes the evolution of excavation and demolition practices in the Commonwealth of Virginia.*

AT RICHMOND, JULY 22, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2013-00312

Ex Parte: In the matter concerning Rules  
Implementing the State Corporation  
Commission's authority to enforce the  
Underground Utility Damage Prevention Act

**ORDER FOR NOTICE AND COMMENT**

Section 56-265.30 of the Code of Virginia ("Code") authorizes the State Corporation Commission ("Commission") to enforce the provisions of Chapter 10.3 of Title 56 of the Code,<sup>1</sup> also known as the Underground Utility Damage Prevention Act ("Act"). Section 56-265.30 of the Code also authorizes the Commission to promulgate any rules or regulations necessary to implement the Commission's authority to enforce the Act.

The Commission's Division of Utility and Railroad Safety ("Division") proposes that the Commission adopt an additional rule, specified in Attachment A to this Order for Notice and Comment, for the enforcement of the Act. This additional rule is required to provide the Commission with increased flexibility in its enforcement of the Act by including a general waiver provision in the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act, 20 VAC 5-309-10 et seq., ("Rules") by which the Rules may be waived by the Commission upon a finding supported by clear and convincing evidence that such a waiver is in the public interest. Since the initial Rules were promulgated in 1994,<sup>2</sup> enhanced technology and methods employed in locating underground utility lines and the protection of such lines from excavation damage have given rise to the need for flexibility in the Commission's enforcement of the Act that recognizes the evolution of excavation and demolition practices in the Commonwealth of Virginia.<sup>3</sup>

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the public should be afforded an opportunity to file written comments concerning the Proposed Rule and to request a hearing before the Commission on any substantive objection that cannot be presented effectively in writing. We further find that a copy of the Proposed Rule should be sent to the Registrar of Regulations for publication in the Virginia Register.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. URS-2013-00312.

(2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment, including a copy of the Proposed Rule, to the Registrar of Regulations for publication in the Virginia Register.

(3) A downloadable version of this Order for Notice and Comment and the Proposed Rule shall be available for access by the public on the Commission's website: <http://www.scc.virginia.gov/case>. A copy of this Order for Notice and Comment and the Proposed Rule shall be available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday from 8:15 a.m. to 5 p.m., excluding holidays.

(4) On or before July 31, 2013, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

**NOTICE TO THE PUBLIC OF A PROPOSED RULE THAT  
THE STATE CORPORATION COMMISSION IS  
CONSIDERING FOR THE ENFORCEMENT OF THE  
UNDERGROUND UTILITY DAMAGE PREVENTION  
ACT**

CASE NO. URS-2013-00312

Section 56-265.30 of the Code of Virginia ("Code") authorizes the State Corporation Commission ("Commission") to enforce the provisions of Chapter 10.3 of Title 56 of the Code, also known as the Underground Utility Damage Prevention Act ("Act"). Section 56-265.30 of the Code also authorizes the Commission to promulgate any rules or regulations necessary to implement the Commission's authority to enforce the Act.

The Commission's Division of Utility and Railroad Safety proposes that the Commission adopt a new rule as an additional requirement for the enforcement of the Act. This additional rule is required to provide the Commission with increased flexibility in its enforcement of the Act by including a general waiver provision in the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act, 20 VAC 5-309-10 et seq., ("Rules") by which the Rules may be waived by the Commission upon a finding supported by clear and convincing evidence that such a waiver is in the public interest. Since the initial Rules were promulgated in 1994, enhanced technology and methods employed in locating underground utility lines and the protection of such lines from excavation damage have given rise to the need for flexibility in the Commission's enforcement of the Act that recognizes the evolution of excavation and demolition practices in the Commonwealth of Virginia. The proposed additional rule is referred to herein as the "Proposed Rule."

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# Regulations

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The Commission has issued an Order for Notice and Comment providing, among other things, that notice be given to the public and that interested persons be given an opportunity to file written comments, or request a hearing, on the Proposed Rule.

Copies of the Commission's Order for Notice and Comment and the Proposed Rule are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday from 8:15 a.m. to 5 p.m., excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before August 26, 2013, any interested person may file written comments, or request a hearing, on the Proposed Rule by filing such comments or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. All correspondence shall refer to Case No. URS-2013-00312.

## STATE CORPORATION COMMISSION

(5) On or before August 26, 2013, any interested person may comment, or request a hearing, on the Proposed Rule by filing such comments or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. Requests for hearing must include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. All correspondence shall refer to Case No. URS-2013-00312.

(6) The Division may file a report with the Clerk of the Commission on or before September 10, 2013, concerning comments submitted to the Commission addressing the Proposed Rule.

(7) This matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be delivered by the Clerk of the Commission to the Commission's Office of General Counsel and Divisions of Utility and Railroad Safety and Information Resources.

422. Order Adopting Procedural Rules for Enforcement of the Underground Utility Damage Prevention Act (Dec. 20, 1994).

<sup>3</sup> The proposed additional rule will be referred to herein as the "Proposed Rule."

### **20VAC5-309-205. Commission authority.**

Upon a finding that the public interest so requires, the commission may, upon motion, grant exemptions from any of the provisions of this chapter. The burden of proof shall be upon the movant to demonstrate, by clear and convincing evidence, that such exemption is in the public interest. The commission may, by order, require modification or elimination of any granted exemption no longer required by the public interest.

VA.R. Doc. No. R13-3817; Filed July 24, 2013, 11:08 a.m.

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<sup>1</sup> Va. Code §§ 56-265.14 et seq.

<sup>2</sup> See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules necessary to implement the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act, Case No. PUE-1994-00071, 1994 S.C.C. Ann. Rept.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 65 (2013)

### **Sharing of Criminal History Record Information for Determining Eligibility for Automatic Restoration of Rights Process**

#### Importance of the Issue

On May 29, 2013, I announced my intent to create a procedure for automatic, individualized restoration of civil rights to non-violent felons who meet the following specific conditions: 1) completion of their sentence, probation or parole; 2) payment of all court costs, fines, restitution, and completion of court-ordered conditions, and 3) have no pending felony charges. This process will allow more Virginians who have been convicted of a non-violent felony to reintegrate into society and exercise their constitutional and civil rights.

In order to determine that individuals meet the necessary criteria for this automatic restoration of rights, it is necessary to review the individual's criminal history. This information will be used for the sole purpose of determining eligibility for automatic restoration of rights based on the individual's criminal conduct.

Accordingly, pursuant to the authority vested in me under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to § 19.2-389 of the Code of Virginia, I hereby direct that the Virginia State Police and Department of Corrections share criminal history record information with the Office of the Secretary of the Commonwealth, as required, for the limited purpose of determining eligibility for automatic restoration of rights and rehabilitation.

The information shared with the Office of the Secretary of the Commonwealth shall not be used for any other purpose. The Secretary shall ensure that the information is secured and protected from further dissemination.

#### Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 15th day of July, 2013.

/s/ Robert F. McDonnell  
Governor

## EXECUTIVE ORDER NUMBER 66 (2013)

### **The Governor's Advisory Board on Service and Volunteerism**

#### Importance of the Initiative

Community and national service are vital to the fabric of American democracy. Volunteerism and service are critical aspects of our civic life. It is appropriate that the state and federal governments work together to develop a focal point for these efforts.

Mindful of the importance of community and national service, and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to § 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Advisory Board on Service and Volunteerism.

The Board is classified as a gubernatorial advisory board in accordance with § 2.2-2100 of the Code of Virginia.

The Board shall be established to comply with the provisions of the National and Community Services Trust Act of 1993 and to advise the Governor and Cabinet Secretaries on matters related to promotion and development of national service in the Commonwealth of Virginia. The Board shall have the following specific duties:

1. To advise the Governor, the Secretaries of Health and Human Resources, Education, Natural Resources, Veterans Affairs and Homeland Security, the Commissioner of Social Services, and other appropriate officials, on national and community service programs in Virginia and on fulfilling the responsibilities and duties prescribed by the federal Corporation for National Service.
2. To advise the Governor, the Secretaries of Health and Human Resources, Education, Natural Resources, Veterans Affairs and Homeland Security, the Commissioner of Social Services, and other appropriate officials, on the development, implementation, and evaluation of Virginia's Unified State Plan that outlines strategies for supporting and expanding national and community service throughout the Commonwealth.
3. To promote the importance of AmeriCorps programs in meeting Virginia's most pressing human, educational, environmental, and public safety needs.
4. To collaborate with the Department of Social Services and other public and private entities to recognize and call attention to the significant community service contributions of Virginia citizens and organizations.
5. To promote volunteer and community service within the Commonwealth.

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# Governor

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6. To work with the Department of Social Services on promoting the involvement of faith based organizations in community and national service efforts.

The Board shall be comprised of no more than twenty voting members appointed by the Governor and serving at his pleasure. No more than 25 percent of voting members may be state employees.

The Governor may appoint additional persons at his discretion as ex-officio, non-voting members. The voting members of the Board shall elect the Chairman. Board voting membership shall include representatives for the categories as outlined in federal regulations issued by the Corporation for National Service.

Such staff support as is necessary to support the Board's work during the term of its existence shall be furnished by the Department of Social Services and any other executive branch agencies having definitely and closely related purposes, as the Governor may designate. An estimated 300 hours of staff time will be required to support the work of the Board.

Funding necessary to support the Board shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes of the Board, authorized by § 2.2-135 of the Code of Virginia. Direct costs for this Board are estimated at no more than \$15,000. Members of the Board shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties.

The Board shall meet at least quarterly upon the call of the Chairperson. The Board shall make an annual report to the Governor and shall issue such other reports and recommendations as it deems necessary or as requested by the Governor.

This Executive Order shall be effective upon its signing and shall remain in force and effect until June 30, 2014, unless amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia this 22nd day of July, 2013.

/s/ Robert F. McDonnell  
Governor

## EXECUTIVE ORDER NUMBER 67 (2013)

### **Additional Authorization Due to a Severe Weather Event Throughout the Commonwealth**

#### Importance of the Initiative

On October 26, 2012, I verbally declared a state of emergency to exist for the Commonwealth of Virginia in anticipation of impacts from Hurricane Sandy, including damaging high winds, periods of heavy rainfall, and coastal and lowland flooding throughout the Commonwealth. On

October 30, 2012, I issued Executive Order 53 in which I memorialized that emergency declaration and directed that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the storm, to alleviate any conditions resulting from significant storm events, and to implement recovery and mitigation operations and activities.

The health and general welfare of the citizens of the Commonwealth require that additional state action be taken to help alleviate the conditions caused by this situation. The effects of this storm constitute a natural disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

In addition to the measures I took pursuant to Executive Order 53, I authorize the following actions to be taken by the Commissioner of the Virginia Marine Resources Commission:

The Marine Resources Commissioner is authorized to act on behalf of the Commission in issuing permits pursuant to Chapter 12 of Title 28.2 of the Code of Virginia when, in the judgment of the Commissioner, it is necessary to address immediate health and safety needs and the Commissioner would be unable to convene a meeting of the full Commission in a timely manner. In an effort to address the impacts attributable to this Storm damage on the health, safety and general welfare of the citizens of the Commonwealth, and in an attempt to expedite the return of impacted areas and structures to pre-event conditions insofar as is possible, no permits for encroachments over State-owned submerged lands shall be required to replace previously permitted structures that conform with the following criteria:

1. The pre-existing structure must have been previously authorized and in a serviceable condition prior to the onset of the Storm.
2. The replacement structure must be reconstructed in the same location and in identical or smaller dimensions as the previously permitted structure
3. Reconstruction activities must be initiated prior to September 1, 2013, and completed prior to January 1, 2014.
4. Any property owner(s) seeking to replace a previously permitted structure pursuant to this Executive Order must submit to the Virginia Marine Resources Commission a letter attesting to the foregoing and containing suitable drawings of the proposed replacement structure(s) for comparison purposes.
5. No person may proceed with replacement of a previously permitted structure under the provisions of this Executive Order without written approval from the Commissioner of the Virginia Marine Resources Commission.

This Executive Order shall be effective upon signing and shall remain in full force and effect until January 1, 2014,

unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 22nd day of July, 2013.

/s/ Robert F. McDonnell  
Governor

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Restore Water Quality - Clinch River

Announcement of an effort to restore water quality in the Clinch River and the following tributaries: Bark Camp Branch, Bear Creek, Fall Creek, Laurel Creek, Little Stoney Creek, Russell Creek, Staunton Creek, Stony Creek, Thompson Creek, Cove Creek, Stock Creek, Copper Creek, Moll Creek, Valley Creek, North Fork Clinch River, and Blackwater Creek in Tazewell, Russell, Wise, Scott, and Lee Counties, Virginia.

Public meeting location: Norton Community Center, 201 East Park Avenue NE, Norton, VA on August 22, 2013, from 6 p.m. to 8 p.m.

Purpose of notice: The Department of Environmental Quality (DEQ) is announcing the final study report to restore water quality, public comment opportunity, and public meeting.

Meeting description: Final public meeting on a study to restore water quality.

Description of study: DEQ has been working to identify sources of bacterial contamination and sources of pollutants affecting aquatic organisms. The mainstem of the Clinch River is impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Bear Creek, Fall Creek, Little Stoney Creek, Russell Creek, Staunton Creek, Stony Creek, Cove Creek, Stock Creek, Copper Creek, Moll Creek, Valley Creek, North Fork Clinch River, and Blackwater Creek are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Bark Camp Branch in Wise County, Laurel Creek in Russell and Tazewell Counties, as well as Thompson Creek in Tazewell County are impaired for failing to meet the aquatic life use (benthic impairment) based on violations of the general standard for aquatic organisms. Bark Camp Branch is also impaired for failure to meet the aquatic life use based on violations of the pH water quality standard.

During the study, the sources of bacterial contamination and pollutants impairing the aquatic community have been identified and total maximum daily loads, or TMDLs, developed for the impaired waters. To restore water quality, contamination levels must be reduced to the TMDL amount. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the

name, address, and telephone number of the person commenting and be received by DEQ during the comment period, August 22, 2013, to September 23, 2013. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at

<http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx>.

Contact for additional information: Martha Chapman, TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email [martha.chapman@deq.virginia.gov](mailto:martha.chapman@deq.virginia.gov).

### Total Maximum Daily Load Implementation Plan for the Linville Creek Watershed

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) Implementation Plan for the Linville Creek watershed in Rockingham County and the Town of Broadway. Linville Creek was first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria and the general water quality standard for aquatic life (benthic impairment) in 1998. The creek has remained on the § 303(d) list for these impairments since then. Both impairment designations on Linville Creek begin at the headwaters and extend 13.55 miles to its confluence with the North Fork of the Shenandoah River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. Bacteria and benthic TMDLs were completed by DEQ for Linville Creek in March 2003 and were approved by the U.S. Environmental Protection Agency in September 2003. The TMDL report is available for review on the DEQ website at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/shenrvr/linville.pdf>.

Development of the TMDL implementation plan began in November, 2012.

The second and final public meeting on the development of this TMDL implementation plan will be held on Wednesday,

August 21, 2013, from 7 p.m. until 9 p.m. at Linville Edom Ruritan Hall, 3752 Linville Edom Road, Linville, VA 22834. The implementation plan will be available on the DEQ website the day after the meeting for public comment:

<http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

The public comment period for the implementation plan will end on September 20, 2013. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, FAX (540) 574-7878, or email [nesha.mcrae@deq.virginia.gov](mailto:nesha.mcrae@deq.virginia.gov).

## MOTOR VEHICLE DEALER BOARD

### Notice of Periodic and Small Business Impact Reviews

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Motor Vehicle Dealer Board is conducting a periodic review and small business impact review of **24VAC22-30, Motor Vehicle Dealer Advertising Practices and Enforcement Regulations**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010). The purpose of this review is to determine whether this regulation should be repealed, 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 August 26, 2013, and ends September 18, 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 Bruce Gould, Executive Director, 2200 West Broad Street, Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1052, or email [bruce.gould@mvdv.virginia.gov](mailto:bruce.gould@mvdv.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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

## SAFETY AND HEALTH CODES BOARD

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board has conducted a small business impact review of **16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes--Incorporation By Reference, 40 CFR 61.140 through 61.156**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 18, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Contractors who remove asbestos from, or demolish buildings containing asbestos, must meet certain standards pursuant to the U.S. Environmental Protection Agency (EPA) National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations and § 112 of the federal Clean Air Act. Therefore, there is a continued need for such a regulation. There were no comments on the regulation during the public comment period. This regulation affects all businesses (large and small) that remove asbestos from or demolish buildings containing asbestos. The regulation is not overly complex. It does not increase the costs for small businesses because the costs are the result of actions that are required by federal law and regulation to provide the protections mandated by this regulation.

As noted, contractors who remove asbestos from, or demolish buildings containing asbestos, must meet certain standards pursuant to the NESHAP regulations and § 112 of the federal Clean Air Act. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation, as these state regulations are enforced by the Department of Labor and Industry in lieu of direct federal enforcement as per agreement between the department and the EPA.

This regulation was last subjected to a periodic review in 2009. Since that review, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The department believes that the regulation provides a positive cost/benefit to the regulated community, as adherence to the requirements of this regulation may actually lower costs to small businesses by protecting the health and well-being of both workers and the public, and thus shielding the businesses from the costs of litigation due to alleged exposures.

Contact Information: Reba O'Connor, Regulatory Coordinator, Main Street Centre, 600 East Main Street, Suite

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## General Notices/Errata

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207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board has conducted a small business impact review of **16VAC25-70, Virginia Confined Space Standard for the Telecommunications Industry**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 18, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Telecommunications companies must meet certain standards pursuant to the U.S. Occupational Safety and Health (OSH) Act of 1970 and 29 CFR 1910.268(o). Therefore, there is a continued need for this regulation. There were no comments on the regulation during the public comment period. This regulation affects primarily businesses that are large, often multi-state, companies that do not meet the definition of small business, as defined in § 2.2-4007.1 A of the Code of Virginia.

Given the complex nature of the industry that it regulates, the regulation is not overly complex. In general, it does not increase the costs for small businesses, because very few small businesses operate in this industry.

As noted, companies working in the telecommunications industry must meet certain standards pursuant to the OSH Act of 1970 and 29 CFR 1910.268(o). This regulation does not overlap, duplicate, or conflict with federal or state law or regulation, as these state regulations are enforced by the Department of Labor and Industry in lieu of direct federal enforcement as per agreement between the department and the federal Occupational Safety and Health Administration.

This regulation was last subjected to a periodic review in 2009. Since that review, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The department believes that the regulation provides a positive cost/benefit to the regulated community, as adherence to the requirements of this regulation may actually lower costs to businesses by protecting the health and well-being of their employees, thus shielding the businesses from the costs of litigation due to alleged exposures.

Contact Information: Reba O'Connor, Regulatory Coordinator, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board has conducted a small business impact review of **16VAC25-97, Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 18, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Construction companies must meet certain standards pursuant to the U.S. Occupational Safety and Health (OSH) Act of 1970. In addition, because federal Occupational Safety and Health Administration (OSHA) mandates that a state plan be at least as effective as the OSHA plan, there is a continued need for such a regulation. There were no comments on the regulation during the public comment period. This regulation affects all businesses (large and small) that are engaged in construction activity. The regulation is not overly complex. It does not increase the costs for small businesses because the costs are the result of actions that are required by federal law and regulation to provide the protections mandated by this regulation.

As noted, companies engaged in construction activity must meet certain standards pursuant to the OSH Act of 1970, and OSHA mandates that a state plan be at least as effective as the OSHA plan. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation, as these state regulations are enforced by the Department of Labor and Industry in lieu of direct federal enforcement as per agreement between the department and OSHA.

This regulation was last subjected to a periodic review in 2009. Since that review, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The department believes that the regulation provides a positive cost/benefit to the regulated community, as adherence to the requirements of this regulation may actually lower costs to small businesses by protecting the health and well-being of their employees, thus shielding the businesses from the costs of litigation due to injuries or fatalities.

Contact Information: Reba O'Connor, Regulatory Coordinator, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).



## Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board has conducted a small business impact review of **16VAC25-140, Virginia Confined Space Standard for the Construction Industry**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 18, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Construction companies must meet certain standards pursuant to the U.S. Occupational Safety and Health (OSH) Act of 1970. In addition, because the federal Occupational Safety and Health Administration (OSHA) mandates that a state plan be at least as effective as the OSHA plan, there is a continued need for such a regulation. There were no comments on the regulation during the public comment period. This regulation affects all businesses (large and small) that are engaged in construction activity. The regulation is not overly complex. It does not increase the costs for small businesses because the costs are the result of actions that are required by federal law and regulation to provide the protections mandated by this regulation.

As noted, companies engaged in construction activity must meet certain standards pursuant to the OSH Act of 1970, and OSHA mandates that a state plan be at least as effective as the OSHA plan. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation, as these state regulations are enforced by the Department of Labor and Industry in lieu of direct federal enforcement as per agreement between the department and OSHA.

This regulation was last subjected to a periodic review in 2009. Since that review, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The department believes that the regulation provides a positive cost/benefit to the regulated community, as adherence to the requirements of this regulation may actually lower costs to small businesses by protecting the health and well-being of their employees, thus shielding the businesses from the costs of litigation due to injuries or fatalities.

Contact Information: Reba O'Connor, Regulatory Coordinator, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

## Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board has conducted a small business impact review of **16VAC25-150, Underground**

**Construction, Construction Industry**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 18, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Construction companies must meet certain standards pursuant to the U.S. Occupational Safety and Health (OSH) Act of 1970. In addition, because the federal Occupational Safety and Health Administration (OSHA) mandates that a state plan be at least as effective as the OSHA plan, there is a continued need for such a regulation. There were no comments on the regulation during the public comment period. This regulation affects all businesses (large and small) that are engaged in construction activity. The regulation is not overly complex. It does not increase the costs for small businesses because the costs are the result of actions that are required by federal law and regulation to provide the protections mandated by this regulation.

As noted, companies engaged in construction activity must meet certain standards pursuant to the OSH Act of 1970, and OSHA mandates that a state plan be at least as effective as the OSHA plan. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation, as these state regulations are enforced by the Department of Labor and Industry in lieu of direct federal enforcement as per agreement between the department and OSHA.

This regulation was last subjected to a periodic review in 2009. Since that review, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The department believes that the regulation provides a positive cost/benefit to the regulated community, as adherence to the requirements of this regulation may actually lower costs to small businesses by protecting the health and well-being of their employees, thus shielding the businesses from the costs of litigation due to injuries or fatalities.

Contact Information: Reba O'Connor, Regulatory Coordinator, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

## Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board has conducted a small business impact review of **16VAC25-170, Virginia Excavation Standard, Construction Industry (29 CFR 1926.650 - 1926.652)**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated July 18, 2013,

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## General Notices/Errata

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to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Construction companies must meet certain standards pursuant to the U.S. Occupational Safety and Health (OSH) Act of 1970. In addition, because the federal Occupational Health and Safety Administration (OSHA) mandates that a state plan be at least as effective as the OSHA plan, there is a continued need for such a regulation. There were no comments on the regulation during the public comment period. This regulation affects all businesses (large and small) that are engaged in construction activity. The regulation is not overly complex. It does not increase the costs for small businesses because the costs are the result of actions that are required by federal law and regulation to provide the protections mandated by this regulation.

As noted, companies engaged in construction activity must meet certain standards pursuant to the OSH Act of 1970, and OSHA mandates that a state plan be at least as effective as the OSHA plan. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation, as these state regulations are enforced by the Department of Labor and Industry in lieu of direct federal enforcement as per agreement between the department and OSHA.

This regulation was last subjected to a periodic review in 2009. Since that review, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The department believes that the regulation provides a positive cost/benefit to the regulated community, as adherence to the requirements of this regulation may actually lower costs to small businesses by protecting the health and well-being of their employees, thus shielding the businesses from the costs of litigation due to injuries or fatalities.

Contact Information: Reba O'Connor, Regulatory Coordinator, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Periodic and Small Business Impact Reviews

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Social Services is conducting a periodic review and small business impact review of **22VAC40-111, Standards for Licensed Family Day Homes**. The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, 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 August 12, 2013, and ends September 2, 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 Rebecca Sagle, Program Consultant, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7037, FAX (804) 726-7132, or email [rebecca.sagle@dss.virginia.gov](mailto:rebecca.sagle@dss.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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

#### Notice of Periodic and Small Business Impact Reviews

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Social Services is conducting a periodic review and small business impact review of **22VAC40-151, Standards for Licensed Children's Residential Facilities**. The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, 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 August 12, 2013, and ends September 2, 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 Sharon Lindsay, Program Consultant, 801

East Main Street, Richmond, VA 23219, telephone (804) 726-7167, FAX (804) 726-7132, or email [sharon.lindsay@dss.virginia.gov](mailto:sharon.lindsay@dss.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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

## STATE WATER CONTROL BOARD

### Proposed Enforcement Action for Commonwealth Wood Preservers, Inc., Hampton

An enforcement action has been proposed for Commonwealth Wood Preservers, Inc., Hampton, for alleged violations of the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Mr. Robin Schuhmann will accept comments by email at [robin.schuhmann@deq.virginia.gov](mailto:robin.schuhmann@deq.virginia.gov), FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from August 12, 2013, through September 11, 2013.

### Proposed Enforcement Action for HP Enterprise Services, LLC

An enforcement action has been proposed for HP Enterprise Services, LLC for alleged violations in Herndon, Virginia. The action seeks to resolve the unauthorized discharge of oil to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Sarah Baker will accept comments by email at [sarah.baker@deq.virginia.gov](mailto:sarah.baker@deq.virginia.gov), FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 13, 2013, through September 12, 2013.

### Proposed Consent Order for Nelson County Service Authority

An enforcement action has been proposed for Nelson County Service Authority for violations in Nelson County. A proposed consent order describes a settlement to resolve effluent limitation violations from the Nelson County Regional STP facility. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email at [steven.hetrick@deq.virginia.gov](mailto:steven.hetrick@deq.virginia.gov), FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road,

Harrisonburg, VA 22801, from August 12, 2013, through September 11, 2013.

### Proposed Guidelines for the New Stormwater Local Assistance Fund

On behalf of the State Water Control Board, the Department of Environmental Quality (DEQ) is presenting its draft guidelines for the new Stormwater Local Assistance Fund for public review and comment. A public meeting will be held at 2 p.m. on Wednesday, August 14, 2013, in the Department of Environmental Quality's 2nd Floor Conference Room, 629 East Main Street, Richmond, Virginia 23219. The public review and comment period will end on September 18, 2013.

In order to reduce non-point source pollution from stormwater runoff, the Virginia General Assembly included Item 360 in Chapter 806 of the 2013 Acts of Assembly (the Commonwealth's 2013-2014 Budget), which created and set forth specific parameters for the administration of the Stormwater Local Assistance Fund (SLAF). With the consolidation of water quality programs with the board through Chapters 756 and 793 of the 2013 Acts of Assembly (HB 2048 and SB 1279), administration of the SLAF resides with the board and DEQ.

The legislation directed the board to issue guidelines for the distribution of moneys from the SLAF and required the process for development of guidelines to include (i) a 60-day public comment period on the draft guidelines; (ii) written responses to all comments received; and (iii) notice of the availability of draft guidelines and final guidelines to all who request such notice. The draft guidelines are now available for public review and comment at <http://www.deq.virginia.gov/programs/water/cleanwaterFinancingAssistance.aspx>.

Questions and comments should be directed to the contact person below.

**Contact Information:** Walter Gills, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email [walter.gills@deq.virginia.gov](mailto:walter.gills@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### 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](mailto: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/connect/commonwealth-calendar>.

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## General Notices/Errata

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**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.