VIRGINIA REGISTER OF REGULATIONS

VOL. 30 ISS. 5 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | NOVEMBER 4, 2013

TABLE OF CONTENTS

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

VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 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.

PUBLICATION SCHEDULE AND DEADLINES

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

November 2013 through December 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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 **(Tuesday)**	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 **(Monday)**	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
31:1	August 20, 2014	September 8, 2014
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

Name of Petitioner: Jeffrey Chase.

Nature of Petitioner's Request: To amend definitions in 18VAC115-20-10 and requirements for a degree program in counseling in 18VAC115-20-49 to accept master's degree graduates of a non-CACREP clinical-counseling psychology program.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition will be filed with the Register of Regulations and published on November 4, 2013, with comment requested until December 4, 2013. It will also be placed on the Virginia Regulatory Townhall and available for comments to be posted electronically. At its first meeting following the close of comment, the board will consider the request to amend regulations and all comment received in support or opposition.

Public Comment Deadline: December 4, 2013.

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

VA.R. Doc. No. R14-02, Filed October 15, 2013, 9:48 a.m.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Charitable Gaming Board intends to consider amending **11VAC15-40, Charitable Gaming Regulations.** The purpose of the proposed action is to adopt regulations pertaining to a new bingo game called "network bingo" pursuant to Chapters 36 and 350 of the 2013 Acts of Assembly. This regulatory action is intended to promulgate the required network bingo regulations as well as amend provisions of the current regulations that staff has identified as needing clarification.

A regulatory advisory panel will be appointed. If interested in serving on the panel, contact the individual listed below.

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

Statutory Authority: §§ 18.2-340.15 and 18.2-340.19 of the Code of Virginia.

Public Comment Deadline: December 4, 2013.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.

VA.R. Doc. No. R14-3873; Filed October 7, 2013, 9:45 a.m.

◆ ◆

TITLE 12. HEALTH

STATE BOARD OF HEALTH

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 Health intends to consider amending **12VAC5-90, Regulations for Disease Reporting and Control**, and repealing **12VAC5-120, Regulations for Testing Children for Elevated Blood-Lead Levels.** The purpose of the proposed action is to amend several disease-specific sections of the disease reporting regulations. Cancer reporting requirements will be updated to require the use of electronic means of reporting. The section on testing of gamete donors will be amended to align state requirements with those of the federal Food and Drug Administration. The board also proposes to incorporate the testing and risk determination criteria for identifying children with elevated blood-lead levels into 12VAC5-90 and to repeal 12VAC5-120, the existing regulation pertaining to blood-lead level testing of children. The Department of Health may request additional changes that reflect changing practices in the field of communicable disease control and emergency preparedness that are needed to protect the health of the residents of Virginia.

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

Statutory Authority: §§ 32.1-35 and 32.1-46.1 of the Code of Virginia.

Public Comment Deadline: December 6, 2013.

Agency Contact: Diane Woolard, PhD, Director, Disease Surveillance, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8124, or email diane.woolard@vdh.virginia.gov.

VA.R. Doc. No. R14-3897; Filed October 16, 2013, 10:56 a.m.

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 Health intends to consider amending **12VAC5-371, Regulations for the Licensure of Nursing Facilities.** The purpose of the proposed action is to bring the regulations into conformance with the provisions of § 32.1-127.001 of the Code of Virginia, enacted in 2005, which, notwithstanding any law or regulation to the contrary, requires the State Board of Health to promulgate regulations for the licensure of hospitals and nursing homes that include minimum standards for design and construction that are consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health (the Guidelines). However, 12VAC5-371 currently provides that the Virginia Uniform Statewide Building Code takes precedence over the Guidelines, which is contrary to the requirements of § 32.1-127.001. The department plans to amend 12VAC5-371-410 and 12VAC5-371-420, pertaining to building and construction codes for nursing facilities, to specify that (i) nursing facilities comply with Part 1 and sections 4.1 and 4.2 of the Guidelines and (ii) the Guidelines take precedence over the Virginia Uniform Statewide Building Code. The department further intends to specify that entities licensed as of the effective date of the amendments may continue to be licensed in their current buildings. However, all new construction, renovation, modification, structural revision, etc. of any space within a nursing facility will require full compliance with the amendments for the entire area of the modified space.

This regulatory action is taken in response to a Petition for Rulemaking.

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

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Public Comment Deadline: December 6, 2013.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-24; Filed October 16, 2013, 10:57 a.m.

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 Health intends to consider amending **12VAC5-410, Regulations for the Licensure of Hospitals in Virginia.** The purpose of the proposed action is to bring the regulations into conformance with the provisions of § 32.1-127.001 of the Code of Virginia, enacted in 2005, which, notwithstanding any law or regulation to the contrary, requires the State Board of Health to promulgate regulations for the licensure of hospitals and nursing homes that include minimum standards for design and construction that are consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health (the Guidelines). However, 12VAC5-410 currently provides that the Virginia Uniform Statewide Building Code takes precedence over the Guidelines, which is contrary to the requirements of § 32.1-127.001. The department plans to amend 12VAC5-410-650 and 12VAC5-410-1350, pertaining to building and construction codes for inpatient and outpatient hospitals, to specify that (i) hospitals comply with Part 1 and sections 2.1 through 2.6 of the Guidelines (depending on the type of hospital) and (ii) the Guidelines take precedence over the Virginia Uniform Statewide Building Code. The board further intends to specify in the regulations that entities licensed as of the effective date of the amendments may continue to be licensed in their current buildings. However, all new construction, renovation, modification, structural revision, etc. of any space within a hospital will require full compliance with the amendments for the entire area of the modified space.

This regulatory action is taken in response to a Petition for Rulemaking.

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

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Public Comment Deadline: December 6, 2013.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Suite 216, Richmond, VA 23230-4920, telephone (804) 367-2157, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-23; Filed October 16, 2013, 10:58 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services,** and **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care.** The purpose of the proposed action is to implement the provisions of Items 307 LL, 307 RR e, and 307 RR f of the 2012 Acts of Assembly, which directed the department to make programmatic changes in community mental health services and to implement a mandatory care coordination model for behavioral health. The proposed action will also (i) clarify eligibility criteria, service definitions, and reimbursement requirements; (ii) require that providers communicate important information to other health care professionals who provide care to the same individuals; and (iii) require service authorization for crisis intervention and crisis stabilization services.

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

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

Public Comment Deadline: December 11, 2013.

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

VA.R. Doc. No. R14-3451; Filed October 10, 2013, 5:32 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending **18VAC90-20, Regulations of the Board of Nursing.** The purpose of the proposed action is to include in 18VAC90-20-390, which provides for content of a medication administration training program, a requirement to complete the curriculum approved by the Department of Behavioral Health and Developmental Services (DBHDS) for unlicensed persons to administer medication via a gastrostomy tube. Chapter 114 of the 2013 Acts of Assembly authorizes a person who has successfully completed a training program approved by the Board of Nursing to administer

medications via percutaneous gastrostomy tube to a person receiving services from a program licensed by DBHDS.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Comment Deadline: December 4, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R14-3733; Filed October 11, 2013, 9:12 a.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 1. ADMINISTRATION

OFFICE OF THE STATE INSPECTOR GENERAL

Final Regulation

REGISTRAR'S NOTICE: The Office of the State Inspector General is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The Office of the State Inspector General will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **1VAC42-10. Policies, Standards, and Procedures for Agency and Institutional Internal Auditors (Directive No. 1-85) (repealing 1VAC42-10-10 through 1VAC42-10-40).**

1VAC42-20. External Review Follow-Up for Agency and Institutional Internal Auditors (Directive No. 1-90) (repealing 1VAC42-20-10 through 1VAC42-20-40).

Statutory Authority: Chapter 572 of the 2011 Acts of Assembly.

Effective Date: December 4, 2013.

Agency Contact: June Jennings, Deputy Inspector General, Office of the State Inspector General, P.O. Box 1971, 101 N. 14th St., 4th Floor, Richmond, VA 23218-1971, telephone (804) 625-3251, FAX (804) 371-0165, or email june.jennings@osig.virginia.gov.

Summary:

In accordance with the Governor's Regulatory Reform Initiative, the Office of the State Inspector General (OSIG) has reviewed its regulations and determined that there are currently two regulations that fall under OSIG that should be repealed: Policies, Standards, and Procedures for Agency and Institutional Internal Auditors (Directive No. 1-85) (1VAC42-10) and External Review Follow-Up for Agency and Institutional Internal Auditors (Directive No. 1-90) (1VAC42-20). These regulations were previously under the Department of Accounts, Division of State Internal Audit. Effective July 1, 2012, OSIG was created by consolidating some of the resources from various agencies including the Division of State Internal Audit. Upon consolidation, the regulations were placed under OSIG. These particular regulations were never applicable to the public as a whole, as they applied to internal audit components within state agencies. The OSIG has issued agency directives to the state agencies that include the requirements of these regulations.

VA.R. Doc. No. R14-3894; Filed October 16, 2013, 11:22 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Fast-Track Regulation

Title of Regulation: **4VAC10-20. Standards for Classification of Real Estate as Devoted to Forest Use under the Virginia Land Use Assessment Law (amending 4VAC10-20-20).**

Statutory Authority: §§ 58.1-3230 and 58.1-3240 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 4, 2013.

Effective Date: January 3, 2014.

Agency Contact: Ronald S. Jenkins, Administrative Officer, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 293-2768, or email ron.jenkins@dof.virginia.gov.

Basis: According to the specific authority and responsibility conveyed by §§ 58.1-3230, 58.1-3233, and 58.1-3240 of the Code of Virginia, the State Forester is directed to provide a statement of the standards that shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. The State Forester has adopted these Standards for Classification of Real Estate as Devoted to Forest Use under the Virginia Land Use Assessment Law (4VAC10-20).

Purpose: Standards for Classification of Real Estate as Devoted to Forest Use under the Virginia Land Use Assessment Law (4VAC10-20) were developed to (i) encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population; (ii) conserve natural resources in forms that will prevent erosion; (iii) protect adequate and safe water supplies; (iv) preserve scenic natural beauties and open spaces; (v) promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population; and (vi) promote a balanced

economy and ease or lessen the pressures that force the conversion of real estate to more intensive uses.

The Department of Forestry held public hearings, pursuant to the Administrative Process Act (§ 2.2-4000 et. seq. of the Code of Virginia) to review the regulations, which provide guidance from the State Forester to each commissioner of revenue and the duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia. The justification for amending 4VAC10-20 is to update and clarify the language in the regulation.

Rationale for Using the Fast-Track Process: During the periodic review of these regulations, the Department of Forestry received zero comments. During the review of these regulations by members of the Board of Forestry, the department received only suggestions for improvement that were unanimously approved by the membership. No controversy has been documented regarding these regulations.

Substance: The amendments (i) adjust the definitions of "tree" and "stocking," (ii) add definitions for "diameter at breast high" and "basal area," and (iii) correct two numerical errors in 4VAC10-20-20 Table 1.

Issues: There are no identified issues associated with this regulatory action to the public, the agency, or the Commonwealth, or to the regulated community.

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 State Forester proposes to: 1) update definition language to reflect current common usage, and 2) correct two numerical errors in the table titled Minimum Number of Trees Required per Acre to Determine 30 Square Feet of Tree Basal Area of 40% Stocking for Classification as Forest Land.

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

Estimated Economic Impact. According to the specific authority and responsibility conveyed by Code of Virginia §§ 58.1-3230, 58.1-3233 and 58.1-3240, the State Forester is directed to provide a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. These regulations are those standards. The regulations are provided to provide clarity and guidance for localities that establish an incentive land use tax rate for landowners who maintain their land in forest use.

The proposed amendments to the definitions are not expected to have a significant impact on localities determinations on whether real estate is devoted to forest use since the proposed language change just reflects current usage. There is some potential small benefit to updating the language for clarity, though. According to the Department of Forestry, the errors in the table have not in practice caused any problems or incorrect determinations of forest use, or would be likely to do so in the future. Thus, the proposal to correct the errors in the table will be moderately beneficial in that it will improve clarity, but not likely have any other impact.

Businesses and Entities Affected. The proposed amendments are not expected to have significant effects beyond improving clarity. The standards in these regulations are used by localities in determining whether real estate is devoted to forest use for tax rate purposes. So more substantive changes could have affected landowners. Currently, 62 counties and 13 cities have an incentive tax rate for land in forest use.

Localities Particularly Affected. The proposed amendments particularly affect localities that have an incentive land use tax rate for landowners who maintain their land in forest use. The following counties have such specified forest use tax rates: Accomack, Albemarle, Alleghany, Amherst, Augusta, Bedford, Bland, Botetourt, Campbell, Caroline, Carroll, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Greene, Hanover, Henrico, Henry, Isle of Wight, James City, King George, King William, Loudoun, Louisa, Madison, Middlesex, Montgomery, Nelson, Northumberland, Orange, Page, Pittsylvania, Powhatan, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Tazewell, Warren, Washington, and Westmoreland. The following cities have such specified forest use tax rates: Chesapeake, Danville, Franklin, Fredericksburg, Harrisonburg, Lynchburg, Manassas, Petersburg, Radford, Staunton, Suffolk, Virginia Beach, and Waynesboro.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly 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.

Agency's Response to Economic Impact Analysis: The Department of Forestry concurs with the economic impact analysis conducted by the Department of Planning and Budget for amendments to Standards for Classification of Real Estate as Devoted to Forest Use Under Virginia Land Use Assessment Law (4VAC10-20).

Summary:

The amendments (i) modify the definitions of "tree" and "stocking," (ii) add definitions for "diameter at breast high" and "basal area," and (iii) correct two mistakes in 4VAC10-20-20 Table 1.

4VAC10-20-20. Technical standards for classification of real estate devoted to forest use.

A. The area must be a minimum of 20 acres and must meet the following standards to qualify for forestry use.

B. Productive forest land. The real estate sought to be qualified shall be devoted to forest use ~~which~~ that has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, as shown in Table 1. Land devoted to forest use that has been recently harvested of merchantable timber, is being regenerated into a new forest, and not currently developed for nonforest use shall be eligible. To be qualified the land must be growing a commercial forest crop that is physically accessible for harvesting when mature.

C. Nonproductive forest land. The land sought to be qualified is land devoted to forest use but ~~which~~ is not capable of growing a crop of industrial wood because of inaccessibility or adverse site conditions such as steep outcrops of rock, shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh, and other conditions ~~which~~ that prohibit the growth and harvesting of a crop of trees suitable for commercial use.

D. Definitions.

1. Tree. ~~A tree is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.~~ A living woody perennial plant, six inches or larger in diameter, of a species presently or prospectively suitable for commercial industrial wood products with a well defined stem or stems carrying a more or less definite crown.

2. Stocking. ~~Stocking~~ Normal stocking is the number of trees three inches and larger in diameter at breast high ~~(d.b.h. a point on the tree trunk outside bark 4 ½ feet from ground level)~~ required to equal a total basal area ~~(b.a. is the area in square feet of a cross section of a tree at d.b.h.)~~ of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings~~,~~ or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in Table 1.

3. Diameter at breast high (DBH). The diameter of the stem of a tree measured at breast height (4.5 feet or 1.37 meters) above the ground.

4. Basal area. The cross-sectional area of a stem, including the bark, measured at breast height.

Table 1
Minimum Number of Trees Required Per Acre to Determine 30 Square Feet of Tree Basal Area of 40% Normal Stocking for Classification as Forest Land.

~~D.B.H.~~ DBH Range	~~D.B.H.~~ DBH in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
up to 2.9"	Seedlings		400	80	40
3.0-4.9"	4	0.0873	~~400~~ 343	80	40
5.0-6.9"	6	0.1964	153	31	15
7.0-8.9"	8	0.3491	86	17	9
9.0-10.9"	10	0.5454	55	11	6
11.0-12.9"	12	0.7854	38	8	4
13.0-14.9"	14	~~0.0690~~ 1.069	28	6	3
15.0-+	16+	1.3963	21	4	2

NOTE: (a) Area 1/5~~;~~ acre; circle, diameter 105'4"; square 93'4" per side

(b) Area 1/10 acre; circle, diameter 74'6"; square 66' per side

(c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 square feet of basal area (25% X 30 = 7.5).

(d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine management is practiced a minimum of 250 well distributed loblolly or white pine seedlings will qualify.

VA.R. Doc. No. R14-3619; Filed October 15, 2013, 10:40 a.m.

TITLE 8. EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Virginia Polytechnic Institute and State University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC105-11. Parking and Traffic (amending 8VAC105-11-10).**

Statutory Authority: §§ 23-9.2:3 and 23-122 of the Code of Virginia.

Effective Date: October 15, 2013.

Agency Contact: Natalie Hart, Deputy Chief of Staff, 210 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-6231 or email nhart@vt.edu.

Summary:

This action amends the university's parking regulations to reflect revised parking procedures.

8VAC105-11-10. Definitions.

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

"Parking and Traffic Procedures" means the ~~2012-2013~~ Parking and Traffic Procedures, Virginia Tech Parking Services, effective October 15, 2013.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"University owned or leased property" means any property owned, leased, or controlled by Virginia Tech.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC105-11)

~~2012-2013 Parking and Traffic Procedures, Virginia Tech Parking Services~~

Parking and Traffic Procedures, Virginia Tech Parking Services (eff. 10/2013)

VA.R. Doc. No. R14-3890; Filed October 15, 2013, 4:35 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation.**

Agency Contact: William K. Norris, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4022, FAX (804) 698-4347, or email william.norris@deq.virginia.gov.

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.

FORMS (9VAC25-32)

Virginia Pollution Abatement Permit Application, General Instructions (rev. 4/09)

Virginia Pollution Abatement Permit Application, Form A, All Applicants (rev. 4/09)

Virginia Pollution Abatement Permit Application, Form B, Animal Waste (rev. 10/95)

Virginia Pollution Abatement Permit Application, Form C, Industrial Waste (rev. 10/95)

Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids Cover Page (rev. 6/13):

Part D-I: Land Application of Municipal Effluent (rev. 4/09)

~~Part D-II: Land Application of Biosolids (rev. 6/13)~~

Part D-II: Land Application of Biosolids (rev. 10/13)

Part D-III: Effluent Characterization Form (rev.4/09)

Part D-IV: Biosolids Characterization Form (rev. 6/13)

Part D-V: Non-Hazardous Waste Declaration (rev. 6/13)

Part D-VI: Land Application Agreement - Biosolids and Industrial Residuals (rev. 9/12)

Part D-VII: Request for Extended Setback from Biosolids Land Application Field (rev. 10/11)

Application for Land Application Supervisor Certification (rev. 2/11)

Application for Renewal of Land Application Supervisor Certification (rev. 2/11)

Sludge Disposal Site Dedication Form, Form A-1 (rev. 11/09)

~~Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement (rev. 11/09)~~

~~Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance (rev. 11/09)~~

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement (rev. 10/13)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance (rev. 10/13)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form III, Corporate Letter (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form IV, Corporate Guarantee (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form V, Letter of Credit (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VI, Trust Agreement (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VII, Local Government Financial Test (rev. 10/13)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VIII, Local Government Guarantee (rev. 10/13)

VA.R. Doc. No. R14-3896; Filed October 17, 2013,

Final Regulation

Title of Regulation: **9VAC25-600. Designated Groundwater Management Areas (amending 9VAC25-600-10, 9VAC25-600-20).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

Effective Date: January 1, 2014.

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.

Summary:

The amendments include the following additional localities in the Eastern Virginia Groundwater Management Area: the counties of Essex, Gloucester, King George, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland and those portions of the counties of Arlington, Caroline, Fairfax, Prince William, Spotsylvania, and Stafford that are located east of Interstate 95.

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 600
DESIGNATED ~~GROUND WATER~~ GROUNDWATER MANAGEMENT AREAS

9VAC25-600-10. Definitions.

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

"Act" means the ~~Ground water~~ Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia).

"Board" means the State Water Control Board.

~~"Ground water~~ "Groundwater management area" means a geographically defined ~~ground water~~ groundwater area in which the board has deemed the levels, supply or quality of ~~ground water~~ groundwater to be adverse to public welfare, health and safety.

~~"Ground water"~~ "Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever ~~may be~~ the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

9VAC25-600-20. Declaration of ~~ground water~~ groundwater management areas.

A. The board hereby orders the declaration of the eastern part of Virginia as a ~~ground water~~ groundwater management area. This area shall be known as the Eastern Virginia [~~Ground Water~~ Groundwater] Management Area. This area encompasses the counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Arlington, Caroline, Chesterfield, Fairfax, Hanover, ~~and~~ Henrico, Prince William, Spotsylvania, and Stafford counties east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

B. The board hereby orders the declaration of the Eastern Shore of Virginia as a [~~ground water~~ groundwater] management area. This area shall be known as the Eastern Shore [~~Ground Water~~ Groundwater] Management Area. The area encompasses the counties of Accomack and Northampton.

C. All aquifers located between the land surface and basement rock within the geographic area defined will be included in the area and will be subject to the corrective controls set forth in Act.

VA.R. Doc. No. R09-1782; Filed October 11, 2013, 9:47 a.m.

Final Regulation

Title of Regulation: **9VAC25-610. Ground Water Withdrawal Regulations (amending 9VAC25-610-10 through 9VAC25-610-170, 9VAC25-610-190, 9VAC25-610-220, 9VAC25-610-240 through 9VAC25-610-350, 9VAC25-610-370, 9VAC25-610-380, 9VAC25-610-390; adding 9VAC25-610-85, 9VAC25-610-92, 9VAC25-610-94, 9VAC25-610-96, 9VAC25-610-98, 9VAC25-610-102, 9VAC25-610-104, 9VAC25-610-106, 9VAC25-610-108; repealing 9VAC25-610-400).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

Effective Date: January 1, 2014.

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.

Summary:

The regulations are amended to be more consistent with administrative and application processing practices currently used in other water permit program regulations. The application requirements for different types of permits and situations are separated into different regulatory sections to provide more clarity concerning the requirements for complete applications. New sections are added to address surface water and groundwater conjunctive use permits and supplemental drought relief permits. The water conservation and management plan section is revised to specify the conservation measures and requirements that must be met depending on the use of the groundwater. The regulations also now identify information to be provided to ensure that the need for the groundwater is documented and that alternatives to using groundwater are investigated and considered. A section is added allowing the agency to estimate an area of impact for mitigation of a small withdrawal based on available modeled information instead of requiring geotechnical investigations to occur. The regulations are also revised to be consistent with current agency guidance concerning the 80% drawdown criteria evaluation. Additional permit conditions are specified in the regulations that will be applicable to all permits, which will clarify the requirements that groundwater withdrawers must meet. Clarifying changes, based on public comments during the public comment period, have been made to the regulation since the proposed stage.

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 610
~~GROUND WATER~~ GROUNDWATER WITHDRAWAL REGULATIONS

Part I
General

9VAC25-610-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Adverse impact" means reductions in ~~ground water~~ groundwater levels or changes in ~~ground water~~ groundwater quality that limit the ability of any existing ~~ground water~~ groundwater user lawfully withdrawing or authorized to withdraw ~~ground water~~ groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of ~~ground water~~ groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a ~~ground water~~ groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm operations, but does not include withdrawals for landscaping activities or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person filing an application to initiate or enlarge a ~~ground water~~ groundwater withdrawal in a ~~ground water~~ groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of ~~ground water~~ groundwater, without recycle of said waters to their source of origin.

"Department" means the Department of Environmental Quality.

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

"Director" means the director of the Department of Environmental Quality.

"Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with such investigations do not result in unmitigated adverse impacts to existing ~~ground water~~ groundwater users. Geophysical investigations include, but are not limited to, pump tests and aquifer tests.

~~"Ground water"~~ "Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

[~~"Historic prepumping water levels" means ground water groundwater levels in aquifers prior to the initiation of any ground water groundwater withdrawals. For the purpose of this chapter, in the Eastern Virginia and Eastern Shore Ground Water Groundwater Management Areas, historic prepumping water levels are defined as water levels present in aquifers prior to 1890.~~]

"Human consumption" means the use of water [~~for~~ to support human survival and health, including] drinking, bathing, showering, cooking, dishwashing, and maintaining [~~oral~~] hygiene.

~~"Human consumptive use" means the withdrawal of ground water for private residential domestic use and that portion of ground water withdrawals in a public water supply system that support residential domestic uses and domestic uses at commercial and industrial establishments.~~

"Mitigate" means to take actions necessary to assure that all existing ~~ground water~~ groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of ~~ground water~~ groundwater needed for existing uses.

"Permit" means a ~~ground water~~ groundwater withdrawal permit issued ~~by the board~~ under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of ~~ground water~~ groundwater under specified conditions in a ~~ground water~~ groundwater management area.

"Permittee" means a person who currently has an effective ~~ground water~~ groundwater withdrawal permit issued ~~by the board~~ under the Ground Water Act of 1992.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to ~~the board's Procedural Rule No. 1.~~ § 62.1-44.15:02 of the Code of Virginia.

"Salt water intrusion" means the encroachment of saline waters in any aquifer that create adverse impacts to existing ~~ground water~~ groundwater users or is counter to the public interest.

"Special exception" means a document issued by the board for withdrawal of ~~ground water~~ groundwater in unusual situations where requiring the user to obtain a ~~ground water~~ groundwater withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of ~~ground water~~ groundwater under specified conditions in a ~~ground water~~ groundwater management area.

"Supplemental drought relief well" means a well permitted to withdraw a specified amount of groundwater to meet human consumption needs during declared drought conditions after mandatory water use restrictions have been implemented.

"Surface water and ~~ground water~~ groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and ~~ground water~~ groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Well" means any artificial opening or artificially altered natural opening, however made, by which ~~ground water~~ groundwater is sought or through which ~~ground water~~ groundwater flows under natural pressure or is intended to be withdrawn.

"Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties.

9VAC25-610-20. Purpose.

The ~~Groundwater~~ Ground Water Management Act of 1992 recognizes and declares that the right to reasonable control of all ~~ground water~~ groundwater resources within the Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ~~ground water~~ groundwater resource and to ensure the public welfare, safety and health, provisions for management and control of ~~ground water~~ groundwater resources are essential. This chapter delineates the procedures and requirements to be followed when establishing Groundwater Management Areas and the issuance of Groundwater Withdrawal Permits by the board

pursuant to the ~~Groundwater~~ Ground Water Management Act of 1992.

9VAC25-610-40. Prohibitions and requirements for ~~ground water~~ groundwater withdrawals.

A. No person shall withdraw, attempt to withdraw, or allow the withdrawal of ~~ground water~~ groundwater within a ~~ground water~~ groundwater management area, except as authorized pursuant to a ~~ground water~~ groundwater withdrawal permit, or as excluded in 9VAC25-610-50.

B. No permit or special exception shall be issued for more ~~ground water~~ groundwater than can be applied to the proposed beneficial use.

9VAC25-610-50. Exclusions.

The following do not require a ~~ground water~~ groundwater withdrawal permit:

1. Withdrawals of less than 300,000 gallons per month;

2. Withdrawals associated with temporary construction dewatering that do not exceed 24 months in duration;

3. Withdrawals associated with a state-approved ~~ground water~~ groundwater remediation that do not exceed 60 months in duration;

4. Withdrawals for use by a ~~ground water~~ groundwater source heat pump where the discharge is reinjected into the aquifer from which it was withdrawn;

5. Withdrawals from ponds recharged by ~~ground water~~ groundwater without mechanical assistance;

6. Withdrawals for the purpose of conducting geophysical investigations, including pump tests;

7. Withdrawals coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals~~,~~ and Energy;

8. Withdrawals coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ~~ground water~~ groundwater users within a ~~ground water~~ groundwater management area;

9. Withdrawals in any area not declared to be a ~~ground water~~ groundwater management area;

10. Withdrawal of ~~ground water~~ groundwater authorized pursuant to a special exception issued by the board; and

11. Withdrawal of ~~ground water~~ groundwater discharged from free flowing springs where the natural flow of the spring has not been increased by any method.

9VAC25-610-60. Effect of a permit.

A. Compliance with a ~~ground water~~ groundwater withdrawal permit constitutes compliance with the permit requirements of the ~~Groundwater~~ Ground Water Management Act of 1992.

B. The issuance of a permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

Part II
Declaration of [~~Ground Water~~ Groundwater] Management Areas

9VAC25-610-70. Criteria for consideration of a ~~ground water~~ groundwater management area.

The board upon its own motion, or in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ~~ground water~~ groundwater management area proceeding, whenever in its judgment there is reason to believe that any one of the four following conditions exist:

1. ~~Ground water~~ Groundwater levels in the area are declining or are expected to decline excessively;

2. The wells of two or more ~~ground water~~ groundwater users within the area are interfering or may be reasonably expected to interfere substantially with one another;

3. The available ~~ground water~~ groundwater supply has been or may be overdrawn; or

4. The ~~ground water~~ groundwater in the area has been or may become polluted.

9VAC25-610-80. Declaration of ~~ground water~~ groundwater management areas.

A. If the board finds that any of the conditions listed in 9VAC25-610-70 exist, and further determines that the public welfare, safety and health require that regulatory efforts be initiated, the board shall declare the area in question a ~~ground water~~ groundwater management area, by regulation.

B. Such regulations shall be promulgated in accordance with the agency's Public Participation Guidelines ~~(9VAC25-10-10 et seq.)~~ (9VAC25-11) and the Administrative Process Act ~~(§ 9-6.14:1 et seq. of the Code of Virginia)~~ (§ 2.2-4000 et seq. of the Code of Virginia).

C. The regulation shall define the boundaries of the ~~ground water~~ groundwater management area, and identify the aquifers to be included in the ~~ground water~~ groundwater management area. Any number of aquifers that either wholly or partially overlie one another may be included within the same ~~ground water~~ groundwater management area.

D. After adoption the board shall mail [by postal or electronic delivery] a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the ~~ground water~~ groundwater management area lies.

Part III
Permit Application and Issuance

9VAC25-610-85. Preapplication meeting.

A. The applicant and owner or operator intending to apply for a new or expanded application for a groundwater withdrawal or reapply for a current permitted withdrawal shall schedule a meeting with the department prior to

submitting their permit application. The purpose of the meeting is to have a mutual exchange of information on the proposed application and applicable regulatory requirements. If the preapplication meeting is being held for a public water supply system, the Virginia Department of Health may participate in the preapplication meeting by providing information and guidance to assist the applicant with meeting Virginia Department of Health regulatory requirements.

B. For applicants reapplying for a current permitted withdrawal, during the preapplication meeting, the department shall discuss information provided in previous permit applications and regular submittals that may or may not be resubmitted as part of the permit application.

~~Part III~~

~~Permit Application and Issuance~~

9VAC25-610-90. Application for a permit by groundwater users in existing groundwater management areas withdrawing prior to July 1, 1992.

~~A.~~ Persons withdrawing ~~ground water~~ groundwater or who have rights to withdraw ~~ground water~~ groundwater prior to July 1, 1992, in the Eastern Virginia or Eastern Shore ~~Ground Water~~ Groundwater Management Areas and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. Any person who was issued a certificate of ~~ground water~~ groundwater right or a permit to withdraw ~~ground water~~ groundwater prior to July 1, 1991, and who was withdrawing ~~ground water~~ groundwater pursuant to said permit or certificate on July 1, 1992, shall file an application on or before December 31, 1992, to continue said withdrawal. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by the existing certificate or permit or by reports required by Water Withdrawal Reporting Regulations (9VAC25-200~~-10 et seq.~~).

2. Any person who was issued a certificate of ~~ground water~~ groundwater right or a permit to withdraw ~~ground water~~ groundwater prior to July 1, 1991, and who had not initiated the withdrawal prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit and shall file an application for a ~~ground water~~ groundwater withdrawal permit on or before December 31, 1995, to continue said withdrawal. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by the existing certificate or permit or by reports required by Water Withdrawal Reporting Regulations (9VAC25-200~~-10 et seq.~~).

3. Any person who was issued a permit to withdraw ~~ground water~~ groundwater on or after July 1, 1991, and prior to July 1, 1992, shall not be required to apply for a ~~ground water~~ groundwater withdrawal permit until the expiration of the permit to withdraw ~~ground water~~ groundwater or 10 years from the date of issuance of the permit to withdraw ~~ground water,~~ groundwater whichever occurs first. Such persons shall reapply for a ~~ground water~~ groundwater withdrawal permit as described in ~~subsection D of this section~~ 9VAC25-610-96.

4. Any person withdrawing ~~ground water~~ groundwater for agricultural or livestock watering purposes on or before July 1, 1992, shall file an application for a ~~ground water~~ groundwater withdrawal permit on or before December 31, 1993. The applicant shall demonstrate the claimed prior withdrawals by voluntary withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200~~-10 et seq.~~) when such reports have been filed with the board. When such reports are not available, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the board.

5. Any political subdivision, or authority serving a political subdivision, holding a certificate of ~~ground water~~ groundwater right or a permit to withdraw ~~ground water~~ groundwater issued prior to July 1, 1992, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application on or before December 31, 1992. Any political subdivision, or authority serving a political subdivision, shall submit, as part of the application, a water conservation and management plan as described in 9VAC25-610-100 B.

6. Any person who is required to apply in subdivision 1, 2, or 5 of this ~~subsection~~ section and who uses the certificated or permitted withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ~~ground water~~ groundwater withdrawal permit.

7. Any person described in subdivision 1, 2, 3, or 5 of this ~~subsection~~ section who files a complete application by the date required may continue to withdraw ~~ground water~~ groundwater pursuant to the existing certificate or permit until such time as the board takes action on the outstanding application for a ~~ground water~~ groundwater withdrawal permit.

8. Any person described in subdivision 4 of this ~~subsection~~ section who files a complete application by the date required may continue his existing withdrawal until such time as the board takes action on the outstanding application for a ~~ground water~~ groundwater withdrawal permit.

9. Any person described in subdivision 1, 2, 3, 4, or 5 of this ~~subsection~~ section who files an incomplete application by the date required may continue to withdraw ~~ground~~

~~water~~ groundwater as described in subdivisions 7 and 8 of this ~~subsection~~ section provided that all information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such person not provide the board the required information within 60 days, he shall cease withdrawals until he provides any additional information to the board and the board concurs that the application is complete.

10. A complete application for those persons described in subdivision 1, 2, 3, 4, or 5 of this ~~subsection~~ section shall contain:

~~a. A ground water withdrawal permit application completed in its entirety. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;~~

~~b. Well construction documentation for all wells associated with the application;~~

~~c. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps or copies of such maps;~~

~~d. Withdrawal reports required by the existing certificate or permit, reports required by Water Withdrawal Reporting Regulations (9VAC25-200-10 et seq.), or estimates of withdrawals as described in subdivision 4 of this subsection to support any claimed prior withdrawal; and~~

~~e. A copy of the Virginia Department of Health waterworks operation permit, or equivalent, where applicable.~~

~~f. Persons described in subdivision 5 of this subsection shall submit a water conservation and management plan as described in 9VAC25-610-100.~~

~~g. The application shall have an original signature as described in 9VAC25-610-150.~~

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake.

e. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

g. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable.

h. Persons described in subdivision 5 of this section shall submit a water conservation and management plan as described in 9VAC25-610-100;

i. Withdrawal reports required by the existing groundwater certificate or permit, reports required by Water Withdrawal Reporting Regulations (9VAC25-200), or estimates of withdrawals as described in subdivision 4 of this section to support any claimed prior withdrawal; and

j. A copy of the Virginia Department of Health waterworks operation permit, or equivalent, where applicable.

11. The board may waive the requirement for information listed in subdivision 10 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

~~11.~~ 12. Any person described in subdivision 1, 2, 3, or 5 of this ~~subsection~~ section who fails to file an application by the date required creates the presumption that all claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned, he shall have filed an application with a letter of explanation to the board by November 21, 1993. Any such person failing to rebut the presumption that claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned who wishes to withdraw ~~ground water~~ groundwater shall apply for a new withdrawal as described in ~~subsection C of this section~~ 9VAC25-610-94.

~~12.~~ 13. Any person described in subdivision 4 of this ~~subsection~~ section who fails to file an application by the date required creates the presumption that all claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to ~~ground water~~ groundwater withdrawal based on historic use have been

abandoned, he may do so by filing an application with a letter of explanation to the board within 60 days of the original required date or within 60 days of January 1, 1999, whichever is later. Any such person failing to rebut the presumption that claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned who wishes to withdraw ~~ground water~~ groundwater shall apply for a new withdrawal as described in ~~subsection C of this section~~ 9VAC25-610-94.

~~B. Persons withdrawing ground water when a ground water management area is declared or expanded after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.~~

~~1. Any person withdrawing ground water in an area that is declared to be a ground water management area after July 1, 1992, shall file an application for a ground water within six months of the effective date of the regulation creating or expanding the ground water management area. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200-10 et seq.). In the case of agricultural ground water withdrawals not required to report by Water Withdrawal Reporting Regulations, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the board.~~

~~2. Any person withdrawing ground water who uses the withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ground water withdrawal permit.~~

~~3. Any person who is required to apply for a ground water withdrawal permit and files a complete application within six months after the effective date of the regulation creating or expanding a ground water management area may continue their withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit.~~

~~4. Any person who is required to apply for a ground water withdrawal permit and files an incomplete application within six months after the effective date of the regulation creating or expanding a ground water management area may continue to withdraw ground water as described in subdivision 3 of this subsection provided that all the information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such person not provide the board the required information within 60 days, he shall cease withdrawals until he provides any additional information to the board and the board concurs that the application is complete.~~

~~5. A complete application for those persons described in subdivision 1 of this subsection shall contain:~~

~~a. A ground water withdrawal permit application completed in its entirety. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;~~

~~b. Well construction documentation for all wells associated with the application;~~

~~c. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2-minute topographic maps or copies of such maps;~~

~~d. Withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200-10 et seq.) or estimates of withdrawals as described in subdivision 1 of this subsection to support any claimed prior withdrawal;~~

~~e. A copy of the Virginia Department of Health waterworks operation permit, where applicable; and~~

~~f. The application shall have an original signature as described in 9VAC25-610-150.~~

~~6. Any person who fails to file an application within six months after the effective date creating or expanding a ground water management area creates the presumption that all claims to ground water withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned, they may do so by filing an application with a letter of explanation to the board within eight months after the date creating or expanding the ground water management area. Any such person failing to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned who wishes to withdraw ground water shall apply for a new withdrawal as described in subsection C of this section.~~

~~C. Persons wishing to initiate a new withdrawal or expand an existing withdrawal in any ground water management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.~~

~~1. A ground water withdrawal permit application shall be completed and submitted to the board and a ground water withdrawal permit issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50.~~

~~2. A complete ground water withdrawal permit application for a new or expanded withdrawal, at a minimum, shall contain the following:~~

~~a. A ground water withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required;~~

b. The application shall include notification from the local governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body of any county, city or town fails to respond within 45 days following receipt of a written request by certified mail, return receipt requested, by an applicant for certification that the location and operation of the proposed facility is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter;

c. The application shall have an original signature as described in 9VAC25-610-150;

d. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7 1/2 minute topographic maps or copies of such maps and a detailed location map of each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

e. A completed well construction report for all existing wells associated with the application. Well construction report forms will be in a format specified by the board and are available from the Department of Environmental Quality;

f. An evaluation of the lowest quality water needed for the intended beneficial use;

g. An evaluation of sources of water supply, other than ground water, including sources of reclaimed water; and

h. A water conservation and management plan as described in 9VAC25-610-100.

3. In addition to requirements contained in subdivision 2 of this subsection, the board may require any or all of the following information prior to considering an application complete.

a. A plan to mitigate potential adverse impacts due to the proposed withdrawal on existing ground water users.

b. The installation of monitoring wells and the collection and analysis of drill cuttings, continuous cores, geophysical logs, water quality samples or other hydrogeologic information necessary to characterize the aquifer system present at the proposed withdrawal site.

c. The completion of pump tests or aquifer tests to determine aquifer characteristics at the proposed withdrawal site.

d. Other information that the board believes is necessary to evaluate the application.

D. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Permittees who have effective permits shall submit a new application 270 days prior to any proposed modification to their activity which will:

a. Result in an increase of withdrawals above permitted limits; and

b. Violate or lead to the violation of the terms and conditions of the permit.

3. The applicant shall provide all information described in subdivisions C 1 and 2 of this section and may be required to provide any information described in subdivision C 3 of this section for any reapplication.

E. Where the board considers an application incomplete under the requirements of this section, the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.

F. When an application does not accurately describe an existing or proposed ground water withdrawal system, the board may require the applicant to amend the existing application, submit a new application, or submit new applications before the application will be processed.

G. All persons required by this chapter to apply for ground water withdrawal permits shall submit application forms in a format specified by the board. Such application forms are available from the Department of Environmental Quality.

H. No ground water withdrawal permit application shall be considered complete until a permit fee is submitted as required by regulations in Fees for Permits and Certificates (9VAC25-20-10 et seq.).

9VAC25-610-92. Application for a permit by existing users when a groundwater management area is declared or expanded on or after July 1, 1992.

Persons withdrawing groundwater when a groundwater management area is declared or expanded on or after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. Any person withdrawing groundwater in an area that is declared to be a groundwater management area on or after July 1, 1992, shall file an application for a groundwater permit within six months of the effective date of the regulation creating or expanding the groundwater

management area. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200), or other methods approved by the board if reporting information pursuant to the Water Withdrawal Reporting Regulations is not available. In the case of agricultural groundwater withdrawals not required to report by Water Withdrawal Reporting Regulations, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the board.

2. Any person withdrawing groundwater who uses the withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a groundwater withdrawal permit.

3. Any person who is required to apply for a groundwater withdrawal permit and files a complete application within six months after the effective date of the regulation creating or expanding a groundwater management area may continue their existing documented withdrawal until such time as the board takes action on the outstanding application for a groundwater withdrawal permit.

4. Any person who is required to apply for a groundwater withdrawal permit and files an incomplete application within six months after the effective date of the regulation creating or expanding a groundwater management area may continue to withdraw groundwater as described in subdivision 3 of this section provided that all the information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such person not provide the board the required information within 60 days, he shall cease withdrawals until he provides any additional information to the board and the board concurs that the application is complete.

5. A complete application for those persons described in subdivision 1 of this section shall contain:

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake;

e. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

g. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

h. Withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200), other documentation demonstrating historical water use approved by the board to support claimed prior withdrawals if [~~water~~] Water Withdrawal Reporting information is unavailable or estimates of withdrawals as described in subdivision 1 of this section to support any claimed prior withdrawal; and

i. A copy of the Virginia Department of Health waterworks operation permit where applicable.

6. The board may waive the requirement for information listed in subdivision 5 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

7. Any person who fails to file an application within six months after the effective date creating or expanding a groundwater management area creates the presumption that all claims to groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned, they may do so by filing an application with a letter of explanation to the board within eight months after the date creating or expanding the groundwater management area. Any such person failing to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned who wishes to withdraw groundwater shall apply for a new withdrawal as described in 9VAC25-610-94.

9VAC25-610-94. Application for a new permit, expansion of an existing withdrawal, or reapplication for a current permitted withdrawal.

Persons wishing to initiate a new withdrawal, expand an existing withdrawal, or reapply for a current permitted withdrawal in any groundwater management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. A groundwater withdrawal permit application shall be completed and submitted to the board and a groundwater withdrawal permit issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50.

2. A complete groundwater withdrawal permit application for a new or expanded withdrawal, or reapplication for a current withdrawal, shall contain the following:

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;

e. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

g. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

h. A water conservation and management plan as described in 9VAC25-610-100;

i. The application shall include notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

j. An alternatives analysis that evaluates sources of water supply other than groundwater, including sources of reclaimed water, and the lowest quality of water needed for the intended beneficial use as described in 9VAC25-610-102;

k. Documentation justifying the need for future water supply as described in 9VAC25-610-102;

l. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing groundwater users. In lieu of developing individual mitigation plans, multiple applicants may choose to establish a mitigation program to collectively develop and implement a cooperative mitigation plan that covers the entire area of impact of all members of the mitigation program; and

m. Other relevant information that may be required by the board to evaluate the application.

3. In addition to requirements contained in subdivision 2 of this section, the board may require any or all of the following information prior to considering an application complete.

a. The installation of monitoring wells and the collection and analysis of drill cuttings, continuous cores, geophysical logs, water quality samples, or other hydrogeologic information necessary to characterize the aquifer system present at the proposed withdrawal site.

b. The completion of pump tests or aquifer tests to determine aquifer characteristics at the proposed withdrawal site.

4. The board may waive the requirement for information listed in subdivision 2 or 3 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

9VAC25-610-96. Duty to reapply for a permit.

A. Any permittee with an effective permit shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board. If a complete application for a new permit has been filed in a timely manner, and the board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit, the permit may be administratively continued.

B. Permittees who have effective permits shall submit a new application 270 days prior to any proposed modification to their activity or withdrawal system that will:

1. Result in an increase of withdrawals above permitted limits; or

2. Violate or lead to the violation of the terms and conditions of the permit.

C. The applicant shall provide all information described in 9VAC25-610-94 for any reapplication. The information may be provided by referencing information previously submitted to the department that remains accurate and relevant to the permit application. The board may waive any requirement of 9VAC25-610-94 if it has access to substantially identical information.

9VAC25-610-98. Incomplete or inaccurate applications.

A. Where the board finds an application to be incomplete under the requirements of 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94, the board shall require the submission of additional information after an application has been filed, and may suspend processing of the application until such time as the applicant has supplied the missing or deficient information and the board finds the application complete. An incomplete permit application for a new or expanded withdrawal may be suspended from processing 180 days from the date that the applicant received notification that the application is deficient. Once an application has been suspended from processing, the applicant must submit a new complete application; however, no additional permit fee will be assessed. Further, where the applicant becomes aware that one or more relevant facts from a permit application were omitted, or that incorrect information was submitted in a permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information.

B. When an application does not accurately describe an existing or proposed groundwater withdrawal, the board may require the applicant to revise the existing application or submit a new application before the application will be processed.

9VAC25-610-100. Water conservation and management plans.

A. Any application to initiate a new withdrawal or expand an existing withdrawal in any ~~ground water~~ groundwater management area or the reapplication at the end of a permit cycle for all permits shall require a water conservation and management plan before the application or reapplication is considered complete. The board shall review all water conservation and management plans and assure that such plans contain all elements required in subsection B of this section. The approved plan shall become an enforceable part of the approved permit.

~~B. A water conservation and management plan shall include:~~

~~1. Requirements for the use of water saving plumbing and processes including, where appropriate, the use of water saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code;~~

~~2. A water loss reduction program;~~

~~3. A water use education program;~~

~~4. An evaluation of potential water reuse options; and~~

~~5. Requirements for mandatory water use reductions during water shortage emergencies declared by the local governing body or director including, where appropriate, ordinances prohibiting the waste of water generally and requirements providing for mandatory water use restrictions, with penalties, during water shortage emergencies.~~

~~C. The board shall review all water conservation and management plans and assure that such plans contain all elements required in 9VAC25-610-100 B. The board shall approve all plans that:~~

~~1. Contain requirements that water saving fixtures be used in all new and renovated plumbing as provided in the Uniform Statewide Building Code;~~

~~2. Contain requirements for making technological, procedural, or programmatic improvements to the applicant's facilities and processes to decrease water consumption. These requirements shall assure that the most efficient use is made of ground water;~~

~~3. Contain requirements for an audit of the total amount of ground water used in the applicant's distribution system and operational processes during the first two years of the permit cycle. Subsequent implementation of a leak detection and repair program will be required within one year of the completion of the audit, when such a program is technologically feasible;~~

~~4. Contain requirements for the education of water users and employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource;~~

~~5. Contain an evaluation of potential water reuse options and assurances that water will be reused in all instances where reuse is feasible;~~

~~6. Contain requirements for mandatory water use restrictions during water shortage emergencies that prohibit all nonessential uses such as lawn watering, car washing, and similar nonessential residential, industrial and commercial uses for the duration of the water shortage emergency; and~~

~~7. Contain penalties for failure to comply with mandatory water use restrictions.~~

B. A water conservation and management plan is an operational plan to be referenced and implemented by the permittee. Water conservation and management plans shall be consistent with local and regional water supply plans in the applicant's geographic area developed as required by 9VAC25-780. The water conservation and management plan shall be specific to the type of water use and include the following:

1. For municipal and nonmunicipal public water supplies:

a. [~~Requirements for the~~ Where practicable, the plan should require] use of water-saving equipment and processes for all water [~~uses~~ users] including [~~,~~] technological, procedural, or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. [~~These requirements shall assure that the most practicable use is made of groundwater. If these options are not implemented in the plan, information~~ The goal of these requirements is to assure the most efficient use of groundwater. Information] on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided. Water conservation and management plans shall discuss high volume water consumption by users on the system and where conservation measures have previously been implemented and shall be applied. Also, where appropriate, the use of water-saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be identified in the plan;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the education of water users and training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for information distribution and the type of materials used;

d. An evaluation of water reuse options and assurances that water shall be reused in all instances where reuse is practicable. Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for mandatory water use reductions during water shortage emergencies declared by the local governing body or water authority consistent with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where appropriate, ordinances in municipal systems prohibiting the waste of water generally and requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies. The water conservation and management plan shall also contain requirements for mandatory water use restrictions during water shortage emergencies that restricts or prohibits all nonessential uses such as lawn watering, car washing, and similar nonessential residential, industrial, and commercial uses for the duration of the water shortage emergency. Penalties for failure to comply with mandatory water use restrictions shall be included in municipal system plans.

2. For nonpublic water supply applicants - commercial and industrial users:

a. [~~Requirements for the~~ Where applicable, the plan should require] use of water-saving equipment and processes for all water [~~uses~~ users] including [~~,~~] technological, procedural, or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. [~~These requirements shall assure that the most practicable use is made of groundwater. If these options are not implemented in the plan, information~~ The goal of these requirements is to assure the most efficient use of groundwater. Information] on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided. Also, where appropriate, the use of water-saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be identified in the plan;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the education of water users and training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for information distribution and the type of materials used;

d. An evaluation of water reuse options and assurances that water shall be reused in all instances where reuse is practicable. Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for complying with mandatory water use reductions during water shortage emergencies declared by the local governing body or water authority in accordance with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where appropriate,

ordinances prohibiting the waste of water generally and requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies. The water conservation and management plan shall also contain requirements for mandatory water use restrictions during water shortage emergencies that restricts or prohibits all nonessential uses such as lawn watering, car washing, and similar nonessential industrial and commercial uses for the duration of the water shortage emergency.

3. For nonpublic water supply applicants - agricultural users:

a. Requirements for the use of water-saving plumbing and processes to decrease the amount of water withdrawn or to decrease water demand. Plans submitted for the use of groundwater for irrigation shall identify the specific type of irrigation system that will be utilized, the efficiency rating of the irrigation system in comparison to less efficient systems, the irrigation schedule used to minimize water demand, and the crop watering requirements. Multiple types of irrigation methods may be addressed in the plan. For livestock watering operations, plans shall include livestock watering requirements (per head) and processes to minimize waste of water. These requirements shall assure that the most practicable use is made of groundwater. If these options are not implemented in the plan, information on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for training employees. This requirement may be met through training employees on water use requirements contained in irrigation management plans or livestock management plans;

d. An evaluation of potential water reuse options and assurances that water shall be reused in all instances where reuse is practicable and not prohibited by other regulatory programs; Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for mandatory water use reductions during water shortage emergencies and compliance with ordinances prohibiting the waste of water generally. This shall include requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies.

f. The permittee may submit portions of Agricultural Management Plans or Irrigation Management Plans developed to comply with requirements of federal or state laws, regulations, or guidelines to demonstrate the requirements of subdivisions B 3 a through d of this section are being achieved.

9VAC25-610-102. Evaluation of need for withdrawal and alternatives.

A. The applicant shall identify the purpose of the proposed withdrawal by providing a narrative description of the water supply issues that form the basis of the proposed withdrawal.

B. The applicant shall subsequently demonstrate to the satisfaction of the board that the withdrawal meets an established water supply need.

1. In establishing local need for a public water supply, the applicant shall provide the following information:

a. Existing supply sources, yields and demands, including:

(1) Peak day and average daily withdrawal;

(2) Total consumptive use component of the withdrawal, including identification of the amount needed for human consumption;

(3) Types of water uses; and

(4) Existing water conservation measures and drought response plan, including what conditions trigger their implementation.

b. Projected demands in 10 year increments over a minimum 30-year planning period that includes the following:

(1) Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area if such area is smaller than the planning area; or

(2) Statistical population (growth) trends, projected demands by use type including projected demand with and without water conservation measures.

2. In establishing need for agricultural water supply, the applicant shall provide the following information:

a. For crop irrigation: crop, acreage, crop spacing, crop watering requirements for the particular crop (crop rooting depth), soil types, soil holding capacity (available water capacity), allowable soil water depletion, historic

precipitation records (precipitation contribution), peak irrigation months, irrigation scheduling approaches (tensiometers vs. feel method), irrigation type (drip, overhead, center pivot etc.), and irrigation system efficiency rating.

b. For livestock watering: kind and size of animal, rate and composition of gain, presence of pregnant animals or lactating animals, type of diet, level of dry matter intake, level of activity, quality of the water, temperature of the water offered, and surrounding air temperature.

3. In establishing need for commercial water supply, the applicant shall provide the following information:

a. Number of employees by month for an average year;

b. Average gallons per day used per month;

c. Average daily water use rate per employee per month; and

d. Identification of peak month of water demand.

4. In establishing need for industrial water supply, the applicant shall provide the following information:

a. SIC or NAICS industry code;

b. Number of employees by month for an average year;

c. Average gallons per day used per month;

d. Average daily water use rate per employee per month;

e. Identification of peak month of water demand;

f. Amount of withdrawal per unit of output or similar metric identified by the user; and

g. Monthly amount of water used for industrial processes.

C. The applicant shall provide an alternatives analysis that evaluates sources of water supply other than groundwater and the availability and use of lower qualities of groundwater that can still be put to beneficial use. For all proposed withdrawals, the applicant shall demonstrate to the satisfaction of the board:

1. Opportunities to reduce and minimize the use of groundwater have been identified and the requested amount is the minimum amount of groundwater necessary for the proposed activity;

2. The project utilizes the lowest quality water for the proposed activity;

3. Alternate sources of supply other than groundwater, including surface water and water reuse, were considered for use in the proposed activity particularly for consumptive use purposes; and

4. Practicable alternatives, including design alternatives, have been evaluated for the proposed activity. Measures that would avoid or result in less adverse impact to high quality groundwater shall be considered to the maximum extent practicable.

D. Any alternatives analysis conducted specifically for public water supply projects shall include:

1. All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9VAC25-780;

2. Alternatives that are practicable that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;

3. Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant; and

4. A narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant, including the interconnectivity of water systems and the ability for applicants to purchase water from other water supplies.

E. The alternatives analysis shall discuss the criteria used to evaluate each alternative including, but not limited to:

1. Demonstration that the proposed alternative meets the project purpose and project demonstrated need;

2. Availability of the alternative to the applicant;

3. Evaluation of interconnectivity of water supply systems and the ability to purchase water from other supplies when applicable (both existing and proposed); and

4. Evaluation of the cost of the alternative on an equivalent basis.

9VAC25-610-104. Surface water and groundwater conjunctive use systems.

A. Surface water and groundwater conjunctive use systems for public water supplies.

1. Applicants proposing to withdraw groundwater as part of a surface water and groundwater conjunctive use system for public water supplies shall provide the following information to the board in addition to information required by 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit application:

a. A detailed description of the surface water and groundwater conjunctive use system, including:

(1) Identification of all surface water sources, including pond and reservoir volumes where applicable;

(2) Identification of the wells used on a continual basis to supplement surface water supply needs and wells to be utilized in periods of reduced surface water availability. Well construction information for all wells shall be submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(a) The depth of the well;

(b) The diameter, top and bottom, and material of each cased interval;

(c) The diameter, top and bottom, for each screened interval; and

(d) The depth of pump intake.

(3) A description of the storage system, excluding surface water sources described in subdivision 1 a (1) of this subsection;

(4) A copy of the Engineering Description Sheet developed by the Virginia Department of Health for the withdrawal; and

(5) A line drawing of the water supply system illustrating the water balance of the system.

b. Records documenting the amount of water withdrawn on a daily basis for each water source during average weather conditions and during drought conditions;

c. Documentation of the seasonal supply of surface water during both average and drought conditions;

d. Documentation of any seasonal changes in demand that occur during an annual cycle of the specified beneficial use or uses; and

e. Other relevant information that may be required by the board to evaluate the application.

2. The applicant shall demonstrate that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use or uses.

3. The board shall evaluate the proposed groundwater withdrawal for consistency with criteria specified in 9VAC25-610-110.

4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, and 9VAC25-610-140, the permit shall specify the maximum amount of groundwater that may be withdrawn during the term of the permit and shall address variations in the groundwater withdrawal amounts that may occur.

5. The board may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

6. Applicants may request approval to withdraw groundwater amounts that exceed the withdrawal limits established in subdivision 4 of this section from wells that are part of a conjunctive use system to meet human consumption needs during periods of drought by applying for a supplemental drought relief permit as described in 9VAC25-610-106.

B. Surface water and groundwater conjunctive use systems for uses other than public water supplies.

1. Applicants proposing to withdraw groundwater as part of a surface water and groundwater conjunctive use system for uses other than public water supplies shall provide the following information to the board in addition to information required by 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit application:

a. A detailed description of the surface water and groundwater conjunctive use system, including:

(1) Identification of all surface water sources, including pond and reservoir volumes where applicable;

(2) Identification of the wells used on a continual basis to supplement surface water supply needs and wells to be utilized in periods of reduced surface water availability. Well construction information for all wells shall be submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(a) The depth of the well;

(b) The diameter, top and bottom, and material of each cased interval;

(c) The diameter, top and bottom, for each screened interval; and

(d) The depth of pump intake.

(3) A description of the storage system, excluding surface water sources described in subdivision 1 a (1) of this subsection; and

(4) A map delineating the area in which the water will be beneficially used.

b. Records documenting the amount of water withdrawn on a monthly basis and annual basis for each water source during average weather conditions and during drought conditions;

c. Documentation of the seasonal supply of surface water during both average and drought conditions;

d. Documentation of any seasonal changes in demand that occur during an annual cycle of the specified beneficial use or uses;

e. Other relevant information that may be required by the board to evaluate the application.

2. The applicant shall demonstrate that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use or uses.

3. The board shall evaluate the proposed groundwater withdrawal for consistency with criteria specified in 9VAC25-610-110.

4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-130, and 9VAC25-610-140, the permit shall specify the maximum amount of groundwater that may be withdrawn during the term of the permit and shall address variations in the groundwater withdrawal amounts that may occur.

5. The board may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

9VAC25-610-106. Supplemental drought relief wells.

A. Public water supplies wishing to withdraw groundwater for human consumption during periods of drought through the use of supplemental drought relief wells in any groundwater

management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

B. A groundwater withdrawal permit application shall be completed and submitted to the board and a groundwater withdrawal permit issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50.

C. A complete groundwater withdrawal permit application for supplemental drought relief wells shall contain the following:

1. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

3. A signature as described in 9VAC25-610-150;

4. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake.

5. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

6. A map identifying the service areas for public water supplies;

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

8. A water conservation and management plan as described in 9VAC25-610-100;

9. The application shall include notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

10. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing groundwater users. In lieu of developing individual mitigation plans, multiple applicants may choose to establish a mitigation program to collectively develop and implement a cooperative mitigation plan that covers the entire area of impact of all members of the mitigation program;

11. Documentation on the maximum amount of groundwater needed annually to meet human consumption needs; and

12. Other relevant information that may be required by the board to evaluate the application.

D. Permits issued by the board for groundwater withdrawals from supplemental drought relief wells shall include the following permit conditions:

1. Permits shall include a maximum amount of groundwater allowed to be withdrawn over the term of the permit.

2. The permit shall specify an annual limit on the amount of groundwater to be withdrawn based on the amount of groundwater needed annually to meet human consumption needs. Groundwater withdrawals from supplemental drought relief wells shall be subject to monthly groundwater withdrawal limits.

3. Permits shall specify that groundwater withdrawn from supplemental drought relief wells shall be used to meet human consumption needs.

4. Permits shall specify that groundwater shall only be withdrawn from supplemental drought relief wells after mandatory water restrictions have been implemented pursuant to approved water conservation and management plans as required by § 62.1-265 of the Code of Virginia.

5. A permit shall contain the total depth of each permitted well in feet.

6. A permit shall specify the screened intervals of wells authorized for use by the permit;

7. A permit shall contain the designation of the aquifers to be utilized.

8. A permit may contain conditions limiting the withdrawal amount of a single well or a group of wells within a withdrawal system to a quantity specified by the board.

9. A groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board

to reduce or eliminate groundwater withdrawals by public water suppliers if necessary to protect human health or the environment.

10. The permit shall state that no pumps or water intake devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

11. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet, or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Permits shall contain requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

c. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

d. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

12. All permits shall prohibit withdrawals from wells not authorized in the permit.

13. All permits shall include requirements to report the amount of water withdrawn from each permitted well or well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

14. Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date that will determine the life of the permit. Groundwater withdrawal permits shall be effective for a fixed term not to exceed 10 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

15. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board.

16. Each well that is included in a groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the Department of Environmental Quality.

E. The permit shall address variations in the groundwater withdrawal amounts that may occur.

F. In addition to the permit conditions listed in subsection D of this section, the board may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

G. The board shall evaluate the application for supplemental drought relief wells based on the following criteria:

1. The applicant demonstrates that no pumps or water intake devices are placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

2. The applicant demonstrates that the amount of groundwater withdrawal requested is the smallest amount of withdrawal necessary to support human consumption when mandatory water use restrictions have been implemented.

3. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the groundwater withdrawal permit.

4. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

5. The board's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing groundwater withdrawers within the area of impact of the proposed withdrawal.

In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

a. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

b. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

c. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

d. The requirement that the claimant provide documentation that he is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens, and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

6. The board conducts a technical evaluation of the [~~stabilized~~] effects of the proposed withdrawal with the stabilized cumulative effects of all existing lawful withdrawals to identify if the withdrawal will lower water levels in any confined aquifer below a point that represents 80% of the distance between the [~~historical prepumping water levels in the aquifer~~ land surface] and the top of the aquifer.

7. The board's technical evaluation demonstrates that the proposed groundwater withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. This provision shall not exclude the withdrawal of brackish water provided that the proposed withdrawal will not result in unmitigated adverse impacts.

9VAC25-610-108. Estimating area of impact for qualifying groundwater withdrawals.

A. For groundwater withdrawals where available information indicates the area of impact for the withdrawal will be less than 12 square miles, the director may estimate, through the use of modeling techniques, the area of impact of a withdrawal for use by the applicant in developing a mitigation plan.

B. The applicant may choose to use the area of impact estimated by the department or the applicant may conduct a geophysical investigation to gather site-specific information to be used as the basis for identifying the area of impact of the withdrawal.

C. The area of impact, whether estimated or identified through an evaluation of a geophysical [~~evaluation~~ investigation], shall be included in the permit's mitigation plan if a plan is required by 9VAC25-610-110 D 3 g.

D. Mitigation plans for all surface water and groundwater conjunctive use system permits and supplemental drought relief permits shall address the area of impact associated with the maximum groundwater withdrawal allowed by such permits.

9VAC25-610-110. ~~Criteria for issuance of permits~~ Evaluation criteria for permit applications.

A. The board shall not issue any permit for more ~~ground water~~ groundwater than will be applied to the proposed beneficial use.

B. The board shall issue ~~ground water~~ groundwater withdrawal permits to persons withdrawing ~~ground water~~ groundwater or who have rights to withdraw ~~ground water~~ groundwater prior to July 1, 1992, in the Eastern Virginia or Eastern Shore ~~Ground Water~~ Groundwater Management [~~Areas~~ Area] and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The board shall issue a ~~ground water~~ groundwater withdrawal permit for persons meeting the criteria of subdivision 1 of 9VAC25-610-90 ~~A 1~~ for the total amount of ~~ground water~~ groundwater withdrawn in any consecutive 12-month period between July 1, 1987, and June 30, 1992; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the board shall issue a ~~ground water~~ groundwater withdrawal permit for the total amount of water withdrawn in any consecutive 12-month period between July 1, 1980, and June 30, 1992.

2. The board shall issue a ~~ground water~~ groundwater withdrawal permit for persons meeting the criteria of subdivision 2 of 9VAC25-610-90 ~~A 2,~~ for the total amount of ~~ground water~~ groundwater withdrawn and applied to a beneficial use in any consecutive 12-month period between July 1, 1992, and June 30, 1995.

3. The board shall issue a ~~ground-water~~ groundwater withdrawal permit for persons meeting the criteria of subdivision 4 of 9VAC25-610-90 ~~A 4~~ for the total amount of ~~ground-water~~ groundwater withdrawn in any consecutive 12-month period between July 1, 1983, and June 30, 1993. The board shall evaluate all estimates of ~~ground-water~~ groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

4. The board shall issue a ~~ground-water~~ groundwater withdrawal permit for persons meeting the criteria of subdivision 5 of 9VAC25-610-90 ~~A 5~~ for the amount of ~~ground-water~~ groundwater withdrawal needed to annually meet human consumption needs as proven in the water conservation and management plan approved by the board. The board shall include conditions in such permits that require the implementation of mandatory use restrictions before such withdrawals can be exercised.

5. When requested by persons described in subdivisions 1, 2, and 4 of 9VAC25-610-90 ~~A 1, 2 and 4,~~ the board ~~shall~~ may issue ~~ground-water~~ groundwater withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

C. The board shall issue ~~ground-water~~ groundwater withdrawal permits to persons withdrawing ~~ground-water~~ groundwater when a ~~ground-water~~ groundwater management area is declared or expanded after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The board shall issue a ~~ground-water~~ groundwater withdrawal permit to nonagricultural users for the total amount of ~~ground-water~~ groundwater withdrawn in any consecutive 12-month period during the five years preceding the effective date of the regulation creating or expanding the ~~ground-water~~ groundwater management area.

2. The board shall issue a ~~ground-water~~ groundwater withdrawal permit to agricultural users for the total amount of ~~ground-water~~ groundwater withdrawn in any consecutive 12-month period during the 10 years preceding the effective date of the regulation creating or expanding the ~~ground-water~~ groundwater management area. The board shall evaluate all estimates of ~~ground-water~~ groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

3. When requested by the applicant the board ~~shall~~ may issue ~~ground-water~~ groundwater withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

D. The board shall issue ~~ground-water~~ groundwater withdrawal permits to persons wishing to initiate a new withdrawal ~~or,~~ expand an existing withdrawal, or reapply for a current withdrawal in any ~~ground-water~~ groundwater management area who have submitted complete applications and are not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The applicant shall provide all information required in ~~9VAC25-610-90 C 2~~ subdivision 2 of 9VAC25-610-94 prior to the board's determination that an application is complete. The board may require the applicant to provide any information contained in ~~9VAC25-610-90 C 3~~ subdivision 3 of 9VAC25-610-94 prior to considering an application complete based on the anticipated impact of the proposed withdrawal on existing ~~ground-water~~ groundwater users or the ~~ground-water~~ groundwater resource.

2. The board shall perform a technical evaluation to determine the areas of any aquifers that will experience at least one foot of water level declines due to the proposed withdrawal and may evaluate the potential for the proposed withdrawal to cause salt water intrusion into any portions

of any aquifers or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ~~ground water~~ groundwater users or the ~~ground water~~ groundwater resource. Prior to public notice of a draft permit developed in accordance with the findings of the technical evaluation and at the request of the applicant, the results of the technical evaluation, including all assumptions and input, will be provided to the applicant for review.

3. The board shall issue a ~~ground water~~ groundwater withdrawal permit when it is demonstrated, by a complete application and the board's technical evaluation, to the board's satisfaction that the maximum safe supply of ~~ground water~~ groundwater will be preserved and protected for all other beneficial uses and that the applicant's proposed withdrawal will have no significant unmitigated impact on existing ~~ground water~~ groundwater users or the ~~ground water~~ groundwater resource. In order to assure that the applicant's proposed withdrawal complies with the above stated requirements, the demonstration shall include, but not be limited to, compliance with the following criteria:

a. The applicant demonstrates that no other sources of water supply, including reclaimed water, are [~~viable~~ practicable].

b. The applicant demonstrates that the ~~ground water~~ groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use.

c. The applicant demonstrates that no pumps or water intake devices are placed ~~below~~ lower than the top of the uppermost confined aquifer that a well utilizes as a ~~ground water~~ groundwater source or ~~below~~ lower than the bottom of an unconfined aquifer that a well utilizes as a ~~ground water~~ groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

d. The applicant demonstrates that the amount of ~~ground water~~ groundwater withdrawal requested is the smallest amount of withdrawal necessary to support the proposed beneficial use and that the amount is representative of the amount necessary to support similar beneficial uses when adequate conservation measures are employed.

e. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the ~~ground water~~ groundwater withdrawal permit.

f. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

g. The board's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing ~~ground water~~ groundwater withdrawers within the area of impact of the proposed withdrawal.

In cases where the area of impact does not remain on the property owned by the applicant or existing ~~ground water~~ groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing ~~ground water~~ groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

(1) The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

(2) A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

(3) A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

(4) The requirement that the claimant provide documentation that he is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

h. The board's technical evaluation demonstrates that the stabilized effects from the proposed withdrawal in combination with the stabilized combined effects of all existing lawful withdrawals will not lower water levels, in any confined aquifer that the withdrawal impacts, below a point that represents 80% of the distance between the [~~historical prepumping water levels in the aquifer~~ land surface] and the top of the aquifer. ~~Compliance with the 80% drawdown criterion will be determined at the points that are halfway between the proposed withdrawal site and the predicted one-foot drawdown contour based on the predicted stabilized effects of the proposed withdrawal.~~ [Compliance with the 80% drawdown criteria will be determined at the points where the predicted one-foot drawdown contour is predicted for the proposed withdrawal.]

i. The board's technical evaluation demonstrates that the proposed ~~ground water~~ groundwater withdrawal will not result in salt water intrusion or the movement of waters

of lower quality to areas where such movement would result in adverse impacts on existing ~~ground water~~ groundwater users or the ~~ground water~~ groundwater resource. This provision shall not exclude the withdrawal of brackish water ~~so long as~~ provided that the proposed withdrawal will not result in unmitigated adverse impacts.

4. The board [~~may~~ shall] also take the following factors into consideration when evaluating a ~~ground water~~ groundwater withdrawal permit application or special conditions associated with a ~~ground water~~ groundwater withdrawal permit:

a. The nature of the use of the proposed withdrawal;

b. [The public benefit provided by the proposed withdrawal;]

[c.] The proposed use of innovative approaches such as aquifer storage and recovery systems, surface water and ~~ground water~~ groundwater conjunctive use systems, multiple well systems that blend withdrawals from aquifers that contain different quality ~~ground water~~ groundwater in order to produce potable water, and desalinization of brackish ~~ground water~~ groundwater;

[d. Prior public investment in existing facilities for withdrawal, transmission, and treatment of groundwater;]

[~~c.~~ e.] Climatic cycles;

[~~d.~~ f.] Economic cycles;

[~~e.~~ g.] The unique requirements of nuclear power stations;

[~~f.~~ h.] Population and water demand projections during the term of the proposed permit;

[~~g.~~ i.] The status of land use and other necessary approvals; and

[~~h.~~ j.] Other factors that the board deems appropriate.

E. When proposed uses of ~~ground water~~ groundwater are in conflict or available supplies of ~~ground water~~ groundwater are not sufficient to support all those who desire to use them, the board shall prioritize the evaluation of applications in the following manner:

1. Applications for human ~~consumptive use~~ consumption shall be given the highest priority;

2. Should there be conflicts between applications for human ~~consumptive uses~~ consumption, applications will be evaluated in order based on the date that said applications were considered complete; and

3. Applications for all uses, other than human consumption, will be evaluated following the evaluation of proposed human ~~consumptive uses~~ consumption in order based on the date that said applications were considered complete.

F. Criteria for ~~reissuance~~ review of ~~permits~~ reapplications for groundwater withdrawal permit.

1. The board shall consider all criteria ~~for reissuance of a ground water withdrawal permit described~~ in subsection D of this section prior to reissuing a groundwater withdrawal permit. Existing permitted withdrawal amounts shall not be the sole basis for determination of the appropriate withdrawal amounts when a permit is reissued.

2. The board shall reissue a permit to any public water supply user for an annual amount no less than the amount equal to that portion of the permitted withdrawal that was used by said system to support human ~~consumptive uses~~ consumption during 12 consecutive months of the previous term of the permit.

9VAC25-610-120. Public water supplies.

The board shall evaluate all applications for ~~ground water~~ groundwater withdrawals for public water supplies as described in 9VAC25-610-110. The board shall make a preliminary decision on the application and prepare a draft ~~ground water~~ groundwater withdrawal permit and forward the draft permit to the Virginia Department of Health. The board shall not issue a final ~~ground water~~ groundwater withdrawal permit until such time as the Virginia Department of Health issues a waterworks operation permit, or equivalent. The board shall establish withdrawal limits for such permits as described in 9VAC25-610-140 A ~~3 and~~ 4 and 5. Under the Virginia Department of Health's Waterworks Regulation any proposed use of reclaimed, reused, or recycled water contained in a ~~ground water~~ groundwater withdrawal application to support a public water supply is required to be approved by the Virginia Department of Health.

9VAC25-610-130. Conditions applicable to all groundwater permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the ~~ground water~~ groundwater withdrawal permit holder of the duty to comply with all applicable federal and state statutes and ~~regulations~~ prohibitions. At a minimum, a person must obtain a well construction permit or a well site approval letter from the Virginia Department of Health prior to the construction of any well for any withdrawal authorized by [~~DEQ~~ the Department of Environmental Quality]. Any permit ~~noncompliance is a~~ violation ~~of the Act and~~ is a violation of the law~~,~~ and is grounds for enforcement action, permit termination, revocation, ~~amendment,~~ modification, or denial of a permit ~~renewal~~ application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to:

1. Avoid all adverse impacts to lawful ~~ground water~~ groundwater users which could result from the withdrawal; and

2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in 9VAC25-610-110 D 3 g.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board or any duly authorized agent of the board ~~or department may~~, at reasonable times and under reasonable circumstances~~:~~, to conduct actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. ~~Enter~~ Entry upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit; and

3. Sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

E. Duty to provide information. The permittee shall furnish to the board, within a reasonable time, any information ~~which~~ that the board may request to determine whether cause exists for ~~amending~~ modifying or revoking, reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include as appropriate:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; ~~and~~

f. The results of such analyses; and

g. Chain of custody documentation.

G. Permit action.

1. A permit may be ~~amended~~ modified or revoked as set forth in Part VI [~~(9VAC25-610-170~~ (9VAC25-610-290] et seq.) of this chapter.

2. If a permittee files a request for permit ~~amendment~~ modification or revocation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until ~~the request is acted upon by~~ the board makes a final case decision. This provision shall not be used to extend the expiration date of the effective permit.

3. Permits may be ~~amended~~ modified or revoked upon the request of the permittee, or upon board initiative, to reflect the requirements of any changes in the statutes or regulations.

9VAC25-610-140. Establishing applicable standards, limitations or other permit conditions.

A. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, and 9VAC25-610-130, each permit shall include conditions with the following requirements:

1. A permit shall contain the total depth of each permitted well in feet;

2. A permit shall specify the screened intervals of wells authorized for use by the permit;

~~2.~~ 3. A permit shall contain the designation of the aquifers to be utilized;

~~3.~~ 4. A permit shall contain conditions limiting the withdrawal amount of a single well or a group of wells that comprise a withdrawal system to a quantity specified by the board. A permit shall contain a maximum annual withdrawal and a maximum monthly groundwater withdrawal limit;

~~4.~~ 5. A ~~ground water~~ groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks

operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate ~~ground water~~ groundwater withdrawals by public water suppliers if necessary to protect human health or the environment;

~~5.~~ 6. The ~~permittee shall not place a pump~~ permit shall state that no pumps or water intake ~~device~~ devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a ~~ground water~~ groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a ~~ground water~~ groundwater source~~;~~ in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

~~6.~~ 7. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users who are issued ~~ground water~~ groundwater withdrawal permits based on 9VAC25-610-110 B 3 and C 2 shall install either in-line totalizing flow meters or hour meters that record the hours of operation of withdrawal pumps on each permitted well prior to beginning the permitted use. Flow meters shall produce volume determinations within plus or minus 10% of actual flows. Hour meters shall produce run times within plus or minus 10% of actual run times. Hour meter readings will be multiplied by the maximum capacity of the withdrawal pump to determine withdrawal amounts. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ~~ground water~~ groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Permitted users who are issued ~~ground water~~ groundwater withdrawal permits based on any section of this chapter not included in subdivision ~~6 a~~ 7 a of this subsection shall install in-line totalizing flow meters to read gallons, cubic feet or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ~~ground water~~ groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

c. Permits shall contain requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

d. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

e. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

8. All permits shall prohibit withdrawals from wells not authorized in the permit.

~~7.~~ 9. All permits shall include requirements to report the amount of water withdrawn from each permitted well and well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

~~8.~~ 10. ~~Ground water~~ Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date which will determine the life of the permit. ~~Ground water~~ Groundwater withdrawal permits [~~shall be~~] shall be effective for a fixed term not to exceed 10 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by ~~amendment~~ modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

~~9.~~ 11. Each permit shall have a condition allowing the reopening of the permit for the purpose of ~~amending~~ modifying the conditions of the permit to meet new regulatory standards duly adopted by the board. ~~Cause for reopening permits include but is not limited to a determination that the circumstances under which the previous permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit amendment or revocation.~~

~~10.~~ 12. Each well that is included in a ~~ground water~~ groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the ~~ground water~~ groundwater withdrawal permit number, the

total depth of the well and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the Department of Environmental Quality.

B. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, and subsection A of this section, each permit may include conditions with the following requirements where applicable:

1. A withdrawal limit may be placed on ~~all or some~~ one or more of the wells ~~which~~ that constitute a withdrawal system;

2. A permit may contain quarterly, monthly, or daily withdrawal limits or withdrawal limits based on any other frequency as determined by the board;

3. A permit may contain conditions requiring water quality and water levels monitoring at specified intervals in any wells deemed appropriate by the board;

4. A permit may contain conditions specifying water levels and water quality action levels in pumping and observation/monitoring wells to protect against or mitigate water quality levels or aquifer degradation. The board may require permitted users to initiate control measures which include, but are not limited to, the following:

a. Pumping arrangements to reduce ~~ground water~~ groundwater withdrawal in areas of concentrated pumping;

b. Location of wells to eliminate or reduce ~~ground water~~ groundwater withdrawals near saltwater-freshwater interfaces;

c. Requirement of selective withdrawal from other available aquifers than those presently used or proposed;

d. Selective curtailment, reduction or cessation of ~~ground water~~ groundwater withdrawals to protect the public welfare, safety, or health or to protect the resource;

e. Conjunctive use of freshwater and saltwater aquifers, or waters of less desirable quality where water quality of a specific character is not essential;

f. Construction and use of observation or monitoring wells~~, drilled into aquifers between areas of ground water withdrawal (or proposed areas of ground water withdrawal) and sources of lower quality water including saltwater~~;

g. ~~Prohibiting~~ Well construction techniques that prohibit the hydraulic connection of aquifers that contain different quality waters, such as gravel packing, that could result in deterioration of water quality in an aquifer; and

h. Such other necessary control or abatement techniques as are ~~technically feasible~~ practicable to protect and beneficially utilize the groundwater resource.

5. A permit may contain conditions limiting water level declines in pumping wells and observation wells; ~~and~~

6. All permits may include requirements to report water quality and water level information on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year; and

7. Permits shall require implementation of water conservation and management plans developed to comply with requirements of 9VAC25-610-100.

C. In addition to conditions described in 9VAC25-610-130 and subsections A and B of this section, the board may issue any groundwater withdrawal permit with any terms, conditions and limitations necessary to protect the public welfare, safety, and health or to protect the resource.

9VAC25-610-150. Signatory requirements.

~~Any application, report, or certification shall be signed as follows:~~

~~1. Application.~~

~~a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

~~b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).~~

~~c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.~~

~~d. Any application for a permit under this regulation must bear the signatures of the responsible party and any agent acting on the responsible party's behalf.~~

A. Application. Any application for a permit under this chapter must bear the applicant's signature or the signature of a person acting in the applicant's behalf with the authority to bind the applicant. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

~~2.~~ B. Reports. All reports required by permits and other information requested by the board shall be signed by:

~~a. One of the persons described in subdivision 1 a, b or c of this section~~ 1. The permittee; or

~~b.~~ 2. A duly authorized representative of that person. A person is a duly authorized representative only if:

~~(1)~~ a. The authorization is made in writing to the board by a person described in ~~subdivision 1 a, b, or c~~ subsection A of this section; and

~~(2)~~ b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated withdrawal ~~facility~~ system or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

~~(3)~~ If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

~~3.~~ C. Certification of application and reports. Any person signing a document under ~~subdivision 1 or 2~~ subsection A or B of this section 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 assure that qualified personnel properly gather and evaluate 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 fine and imprisonment for knowing violations.

9VAC25-610-160. Draft permit.

A. Upon receipt of a complete application for a new or expanded withdrawal or a complete application to ~~amend~~ modify an existing withdrawal, the board shall make a tentative decision to issue or deny the ~~application~~ permit. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft permit:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the permit;

2. Monitoring and reporting requirements;

3. Requirements for mitigation of adverse impacts; and

4. Requirements for a water conservation and management plan.

B. If the tentative decision is to deny the ~~application~~ permit, the board shall do so in accordance with 9VAC25-610-340.

Part IV
Special Exception Application and Issuance

9VAC25-610-170. Application for a special exception.

A. Any person who wishes to initiate a ~~ground water~~ groundwater withdrawal in any ~~ground water~~ groundwater management area and is not exempted from the provisions of this chapter by 9VAC25-610-50 may apply for a special exception in unusual cases where requiring the proposed user to obtain a ~~ground water~~ groundwater withdrawal permit would be contrary to the purpose of the ~~Groundwater~~ Ground Water Management Act of 1992.

B. A special exception application shall be completed and submitted to the board and a special exception issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50 ~~of this chapter~~. Special exception application forms shall be in a format specified by the board and are available from the Department of Environmental Quality.

C. Due to the unique nature of applications for special exceptions the board shall determine the completeness of an application on a case-by-case basis. The board may require any information required in ~~9VAC25-610-90 C 2 or 3~~ 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94, prior to considering an application for a special exception complete.

D. Where the board ~~considers~~ finds an application incomplete, the board ~~may~~ shall require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board ~~considers~~ finds the application complete. An incomplete permit application for a special exception may be suspended from processing 180 days from the date that the applicant received notification that the application is deficient. Further, where the applicant becomes aware that he omitted one or more relevant facts from a special exception application, or submitted incorrect information in a special exception application or in any report to the board, he shall immediately submit such facts or the correct information.

9VAC25-610-190. Criteria for the issuance of special exceptions.

A. The board shall issue special exceptions only in unusual situations where the applicant demonstrates to the board's satisfaction that requiring the applicant to obtain a ~~ground water~~ groundwater withdrawal permit would be contrary to the intended purposes of the ~~Groundwater~~ Ground Water Management Act of 1992.

B. The board may require compliance with any criteria described in 9VAC25-610-110.

9VAC25-610-220. Establishing applicable standards, limitations or other special exception conditions.

The board may issue special exceptions which include any requirement for permits as described in 9VAC25-610-140.

Special exceptions shall not be renewed, except in the case of special exceptions that have been issued to allow ~~ground water~~ groundwater withdrawals associated with state-approved ~~ground water~~ groundwater remediation activities. In the case of reissuance of a special exception for a state-approved ~~ground water~~ groundwater remediation activity, the board may require the holder of the special exception to submit any information required in ~~9VAC25-610-90 C 2 or 3~~ 9VAC25-610-90, 9VAC25-610-92, and 9VAC25-610-94, and may require compliance with any criteria described in 9VAC25-610-110. In the case where any other activity that is being supported by the specially excepted withdrawal will require that the withdrawal extend beyond the term of the existing special exception, the ~~ground water~~ groundwater user shall apply for a permit to withdraw ~~ground water~~ groundwater.

9VAC25-610-240. Draft special exception.

A. Upon receipt of a complete application, the board shall make a tentative decision to issue or deny the ~~application~~ special exception. If a tentative decision is to issue the special exception then a draft special exception shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft special exception:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the special exception;

2. Monitoring and reporting requirements; and

3. Requirements for mitigation of adverse impacts.

B. If the tentative decision is to deny the ~~application~~ special exception, the board shall return the application to the applicant. The applicant may then apply for a ~~ground water~~ groundwater withdrawal permit for the proposed withdrawal in accordance with Part III (9VAC25-610-85 et seq.) of this chapter.

Part V
Public Involvement

9VAC25-610-250. Public notice of permit or special exception action and public comment period.

A. Every draft permit described in 9VAC25-610-160 A and draft special exception shall be given public notice ~~in a form prescribed by the board and~~, paid for by the ~~owner~~ applicant, by publication once in a newspaper of general circulation in the area affected by the withdrawal.

B. Notice of each draft permit described in 9VAC25-610-160 A and draft special exception will be mailed by the board to each local governing body within the ~~ground water~~ groundwater management area within which the proposed withdrawal will occur on or before the date of public notice.

C. The board shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request ~~an informal~~ a public hearing.

D. The contents of the public notice of a draft permit or draft special exception action shall include:

1. Name and address of the applicant. If the location of the proposed withdrawal differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified;

2. Brief description of the beneficial use that the ~~ground water~~ groundwater withdrawal will support;

3. The name and depth below ground surface of the aquifer that will support the proposed withdrawal;

4. The amount of ~~ground water~~ groundwater withdrawal requested expressed as an average gallonage per day;

5. A statement of the tentative determination to issue or deny a permit or special exception;

6. A brief description of the final determination procedure;

7. The address, email address, and phone number of a specific person or persons at the department's office from whom further information may be obtained; and

8. A brief description on how to submit comments and request a public hearing.

E. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application or for draft permits for existing ~~ground water~~ groundwater withdrawals when such draft permits are based solely on historic withdrawals.

F. When a permit or special exception is denied the board will do so in accordance with 9VAC25-610-340.

9VAC25-610-260. Public access to information.

All information pertaining to ~~permit and special exception application and processing shall be available to the public~~ groundwater permit processing or in reference to any activity requiring a groundwater permit under this chapter shall be available to the public unless the applicant has made a showing that the information is protected by the applicant as a trade secret covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the board.

9VAC25-610-270. Public comments and public hearing.

~~A. All written comments submitted during the 30 day comment period described in 9VAC25-610-250 C shall be retained by the board and considered during the board's final decision on the permit or special exception.~~

~~B.~~ A. The director shall consider all written comments and requests for ~~an informal~~ a public hearing received during the comment period, and shall make a determination on the necessity of ~~an informal~~ a public hearing in accordance with ~~9VAC25-230-50~~ § 62.1-44.15:02 of the Code of Virginia. All proceedings, ~~informal~~ public hearings, and decisions from ~~them~~ it will be in accordance with ~~Procedural Rule No. 1~~ § 62.1-44.15:02 of the Code of Virginia.

~~C. Should the director, in accordance with Procedural Rule No. 1, determine to dispense with the informal hearing, he may grant the permit or special exception, or, at his discretion, transmit the application or request, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision.~~

~~D.~~ B. Any ~~owner~~ applicant or permittee aggrieved by ~~any~~ an action of the board or director taken without a formal hearing or inaction of the board or director may request in writing a formal hearing pursuant to ~~Procedural Rule No. 1~~ § 62.1-44.25 of the Code of Virginia.

9VAC25-610-280. Public notice of hearing.

A. Public notice of any ~~informal~~ public hearing held pursuant to 9VAC25-610-270 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the area affected by the proposed withdrawal at least 30 days in advance of the public hearing; and

2. Notice of the ~~informal~~ public hearing shall be sent to all persons and government agencies which received a copy of the public notice of the draft permit or special exception and to those persons requesting ~~an informal~~ a public hearing or having commented in response to the public ~~notice~~ in accordance with § 62.1-44.15:02 of the Code of Virginia.

B. ~~Notice shall be effected pursuant to subdivisions A 1 and A 2 of this section, upon mailing, at least 30 days in advance of the informal hearing.~~ The cost of public notice shall be paid by the applicant.

C. The content of the public notice of any ~~informal~~ public hearing held pursuant to 9VAC25-610-270 shall include at least the following:

1. Name and address of each person whose application will be considered at the ~~informal~~ public hearing, the amount of ~~ground water~~ groundwater withdrawal requested expressed as an average gallonage per day, and a brief description of the beneficial use that will be supported by the proposed ~~ground water~~ groundwater withdrawal.

2. The precise location of the proposed withdrawal and the aquifers that will support the withdrawal. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information.

3. A brief reference to the public notice issued for the permit or special exception application and draft permit or special exception, including identification number and date of issuance unless the public notice includes the ~~informal~~ public hearing notice.

4. Information regarding the time and location for the ~~informal~~ public hearing.

5. The purpose of the ~~informal~~ public hearing.

6. A concise statement of the relevant issues raised by the persons requesting the ~~informal~~ public hearing.

7. Contact person and the ~~address~~ mailing address, email address, phone number, and name of the Department of Environmental Quality office at which interested persons may obtain further information or request a copy of the draft permit or special exception.

8. A brief reference to the rules and procedures to be followed at the ~~informal~~ public hearing.

D. Public notice of any formal hearing held pursuant to 9VAC25-610-270 ~~D~~ [~~C~~ B] shall be in accordance with Procedural Rule No.1 (9VAC25-230).

Part VI
Permit and Special Exception ~~Amendment~~ Modification, Revocation and Denial

9VAC25-610-290. Rules for ~~amendment~~ modification and revocation.

Permits and special exceptions shall be ~~amended~~ modified or revoked only as authorized by this part of this chapter as follows:

1. A permit or special exception may be ~~amended~~ modified in whole or in part, or revoked;

2. Permit or special exception ~~amendments~~ modifications shall not be used to extend the term of a permit or special exception; and

3. ~~Amendment~~ Modification or revocation may be initiated by the board, ~~on~~ at the request of the permittee, or other person at the board's discretion under applicable laws or the provisions of this chapter.

9VAC25-610-300. Causes for revocation.

A. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a permit or special exception can be revoked for cause. Causes for revocation are as follows:

1. Noncompliance with any condition of the permit or special exception;

2. Failure to fully disclose all relevant facts or misrepresentation of a material fact in applying for a permit or special exception, or in any other report or document required by the Act, this chapter or permit or special exception conditions;

3. The violation of any regulation or order of the board, or any order of a court, pertaining to ~~ground water~~ groundwater withdrawal;

4. A determination that the withdrawal authorized by the permit or special exception endangers human health or the environment and can not be regulated to acceptable levels by permit or special exception ~~amendment~~ modification;

5. A material change in the basis on which the permit or special exception was issued that requires either a temporary or permanent reduction, application of special

conditions or elimination of any ~~ground water~~ groundwater withdrawal controlled by the permit or special exception.

B. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a permit or special exception ~~can~~ may be revoked when any of the developments described in 9VAC25-610-310 occur ~~and the holder of the permit or special exception agrees to or requests the revocation~~.

9VAC25-610-310. Causes for ~~amendment~~ modification.

A. A permit or special exception may, at the board's discretion, be ~~amended~~ modified for any cause as described in 9VAC25-610-300.

B. A permit or special exception may be ~~amended~~ modified when any of the following developments occur:

1. When new information becomes available about the ~~ground water~~ groundwater withdrawal covered by the permit or special exception, or the impact of the withdrawal, which was not available at permit or ~~or~~ special exception issuance and would have justified the application of different conditions at the time of issuance;

2. When ~~ground water~~ groundwater withdrawal reports submitted by the permittee indicate that the permittee is using less than 60% of the permitted withdrawal amount for a five-year period;

3. When a change is made in the regulations on which the permit or special exception was based; or

4. When changes occur which are subject to "reopener clauses" in the permit or special exception.

9VAC25-610-320. Transferability of permits and special exceptions.

A. Transfer by ~~amendment~~ modification. Except as provided for under automatic transfer in subsection B of this section, a permit or special exception shall be transferred only if the permit has been ~~amended~~ modified to reflect the transfer.

B. Automatic transfer. Any permit or special exception shall be automatically transferred to a new owner as allowed by the minor modification process described in 9VAC25-610-330 B 8 if:

1. The current owner notifies the board within 30 days in advance of the proposed transfer of ownership;

2. The notice to the board includes a notarized written agreement between the existing permittee and proposed new ~~owner~~ permittee containing a specific date of transfer of permit or special exception responsibility, coverage and liability ~~between them~~ to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; ~~and~~

3. The board does not within the 30-day time period notify the existing ~~owner~~ permittee and the proposed ~~owner~~ permittee of its intent to ~~amend~~ modify, revoke, or reissue the permit or special exception~~.~~; and

4. The permit transferor and the permit transferee provide written notice to the board of the actual transfer date.

9VAC25-610-330. Minor ~~amendment~~ modification.

A. Upon request of the holder of a permit or special exception, or upon board initiative with the consent of the holder of a permit or special exception, minor ~~amendments~~ modifications may be made in the permit or special exception without following the public involvement procedures.

B. For ~~ground water~~ groundwater withdrawal permits and special exceptions, minor ~~amendments~~ modifications may only:

1. Correct typographical errors;

2. Require reporting at a greater frequency than required in the permit or special exception;

3. Add additional or more restrictive monitoring requirements than required in the permit or special exception;

4. Replace an existing well ~~so long as~~ provided that the replacement well is screened in the same aquifer or aquifers as the existing well, the replacement well is in the ~~same location as~~ near vicinity of the existing well, the ~~ground water~~ groundwater withdrawal does not increase, and the area of impact does not increase;

5. Add additional wells so long as the additional wells are screened in the same aquifer or aquifers as the existing well, additional wells are in the ~~same location as~~ near vicinity of the existing well, the total ~~ground water~~ groundwater withdrawal does not increase, and the area of impact does not increase;

6. Combine the withdrawals governed by multiple permits into one permit when the systems that were governed by the multiple permits are physically connected, as long as the interconnection will not result in additional ~~ground water~~ groundwater withdrawal and the area of impact will not increase;

7. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date; ~~and~~

8. Allow for a change in ownership or operational control when the board determines that no other change in the permit or special exception is necessary, provided that a written agreement containing a specific date for transfer of permit or special exception responsibility, coverage and liability from the current to the new owner has been submitted to the board~~.~~; and

9. Revise a water conservation and management plan to update conservation measures being implemented by the permittee that increase the amount of groundwater conserved.

9VAC25-610-340. Denial of a permit or special exception.

A. The director shall make a decision to tentatively deny the permit or special exception requested if the requirements of this chapter are not met. Bases for denial include, but are not limited to, the following:

1. The cumulative stabilized impact of the proposed withdrawal in combination with all existing lawful withdrawals will lower water levels in a confined aquifer below a point that represents 80% of the distance between the [~~historical prepumping water levels in the aquifer~~ land surface] and the top of the aquifer;

2. The groundwater withdrawal amount requested in the permit application exceeds the amount that can be applied to the proposed beneficial use; [and]

3. Available supplies of groundwater are insufficient for all who desire to use them and the preference is being given to use for human consumption [~~; and.~~]

[~~4. Failure to implement a water conservation and management plan associated with a previously permitted withdrawal.~~]

~~A.~~ B. The applicant shall be notified by letter of the ~~department's~~ director's preliminary decision to ~~recommend to the board denial of~~ tentatively deny the permit or special exception requested.

~~B.~~ C. The department shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may, at his option, modify the application in order to achieve a favorable recommendation; withdraw his application; or proceed with the processing on the original application.

~~C.~~ D. Should the applicant withdraw his application, no permit or special exception will be issued.

~~D.~~ E. Should the applicant elect to proceed ~~with the original project~~ as originally proposed, the ~~staff shall make its recommendation of denial to the director for determination of the need for public notice as provided for in Part V of this chapter~~ director shall advise the applicant of his right to an informal fact finding in accordance with § 2.2-4019 of the Administrative Process Act to consider the denial.

Part VII
Enforcement

9VAC25-610-350. Enforcement.

The board may enforce the provisions of this chapter utilizing all applicable procedures under the ~~Groundwater~~ Ground Water Management Act of 1992 or any other section of the Code of Virginia that may be applicable.

9VAC25-610-370. Control of naturally flowing wells.

The owner of any well that naturally flows, in any portion of the Commonwealth, shall either:

1. Permanently abandon the well in accordance with the Virginia Department of Health's Private Well Construction Regulations; or

2. Equip the well with valves that will completely stop the flow of ~~ground water~~ groundwater when it is not being applied to a beneficial use.

9VAC25-610-380. Statewide information requirements.

The board may require any person withdrawing ~~ground water~~ groundwater for any purpose anywhere in the Commonwealth, whether or not declared to be a ~~ground water~~ groundwater management area, to furnish to the board such information that may be necessary to carry out the provisions of the ~~Groundwater~~ Ground Water Management Act of 1992. ~~Ground water~~ Groundwater withdrawals that occur in conjunction with activities related to the exploration and production of oil, gas, coal, or other minerals regulated by the Department of Mines, Minerals and Energy are exempt from any information reporting requirements.

9VAC25-610-390. Statewide right to inspection and entry.

Upon presentation of credentials the board, or any duly authorized agent, shall have the power to enter, at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, located anywhere in the Commonwealth for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which the board or department may adopt, issue or establish to carry out the provisions of the ~~Groundwater~~ Ground Water Management Act of 1992 and this chapter.

9VAC25-610-400. ~~Evaluation of regulation.~~ (Repealed.)

~~Within three years after January 1, 1999, the department shall perform an analysis of 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, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (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.~~

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

General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-610)

~~Water Division Permit Application Fee.~~

~~Application for a Ground Water Withdrawal Permit (with instructions) (rev. 6/99).~~

~~Ground Water Withdrawal Permit Change of Ownership Agreement Form (eff. 6/99).~~

~~Revocation Agreement Form (eff. 6/99).~~

~~Water Well Completion Report, Form GW2, (rev. 6/99).~~

~~Permit to Withdraw Ground Water (eff. 6/99).~~

~~Public Notice Authorization Form - Authorization for Public Notice Billing to Ground Water Withdrawal Permit Applicant (eff. 6/99).~~

~~Preapplication Meeting Application for a Ground Water Withdrawal Permit (eff. 6/99).~~

~~Local and Areawide Planning Requirements (eff. 5/99).~~

~~Quarterly Groundwater Withdrawal Report.~~

Water Division Permit Application Fee (rev. 9/12)

Application Instructions for Completing a Groundwater Withdrawal Permit Application [~~(undated)~~ (rev. 11/13)]

Application for a Groundwater Withdrawal Permit (rev. 9/12)

Groundwater Withdrawal Permit - Change of Ownership Agreement Form [~~(undated)~~ (rev. 11/13)]

Uncontested Termination Agreement [~~(undated)~~ (rev. 11/13)]

Water Well Completion Report, Form GW2 [~~(undated)~~ (eff. 7/07)]

Public Notice Authorization Form - Authorization for Public Notice Billing to Groundwater Withdrawal Permit Applicant [~~(undated)~~ (rev. 11/13)]

Preapplication Meeting - Application for a Groundwater Withdrawal Permit (rev. 9/12)

Local and Areawide Planning Requirements (rev. 9/12)

Quarterly Groundwater Withdrawal Report [(rev. 11/13)]

Mitigation Plan [(rev. 11/13)]

VA.R. Doc. No. R09-1781; Filed October 11, 2013, 9:51 a.m.

◆ ◆

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-80. Regulations for Administration of the Virginia Hearing Impairment Identification and Monitoring System (amending 12VAC5-80-10, 12VAC5-80-80, 12VAC5-80-90, 12VAC5-80-95; adding 12VAC5-80-75, 12VAC5-80-85, 12VAC5-80-130, 12VAC5-80-140; repealing 12VAC5-80-20, 12VAC5-80-30, 12VAC5-80-40).**

Statutory Authority: §§ 32.1-12 and 32.1-64.1 of the Code of Virginia.

Effective Date: December 6, 2013.

Agency Contact: Susan Tlusty, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, or email susan.tlusty@vdh.virginia.gov.

Summary:

The proposed amendments conform the regulation to changes in national standards and incorporate amendments suggested by a 2007 periodic review. Substantive changes include (i) moving risk factor criteria to identify infants at risk for hearing loss from the definitions section to a new section and placing detailed criteria for each category of risk under a guidance document; (ii) requiring infants who receive neonatal intensive care services for longer than five days to be tested with ABR screening technology; and (iii) further defining reporting requirements that include provisions for confirming negative results. Since publication of the proposed amendments, additional changes (i) add new sections to address responsibilities of other birthing places or centers; (ii) stipulate reporting responsibilities to primary health care providers and clarify the program relationship to the Part C system; and (iii) remove language that might go beyond the scope of the authority of the State Board of Health.

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.

12VAC5-80-10. Definitions.

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

"ABR" means an objective, electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

"At risk" means considered to be in a status with a significant probability of having or developing hearing loss as a result of the presence of one or more factors identified or manifested at birth.

"Audiological evaluation" means those physiologic and behavioral procedures required to evaluate and diagnose hearing status.

"Audiologist" means [~~a person licensed to engage in the practice of audiology~~ an audiologist] as defined in § 54.1-2600 of the Code of Virginia.

[~~"Birthing center" means a facility outside of a hospital that provides maternity services.~~]

"Board" means the State Board of Health.

"CDC" means the Centers for Disease Control and Prevention.

["Chief medical officer" means the highest position of authority on the medical staff of the hospital or other birthing place or center as defined in the organization's bylaws or applicable governance structure.]

"Child" means any person from birth to ~~age~~ 18 years of age.

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

"Department" means the Virginia Department of Health.

~~"Diagnostic audiological evaluation" means those physiologic and behavioral procedures required to evaluate and diagnose hearing status.~~

"Discharge" means release from the hospital after birth to the care of the parent or guardian.

"EHDI" means early hearing detection and intervention.

"Family-to-family support" means the provision of information and peer support among families having experience with family members having hearing loss.

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

"Hearing screening" means an objective physiological measure to be completed in order to determine the likelihood of hearing loss.

"Hospital" means any facility as defined in § 32.1-123 of the Code of Virginia.

"Infant" means a child under the age of one year.

~~"Missed" means that an infant did not have a required hearing screening prior to discharge.~~

"Neonatal intensive care services" means those services provided by a hospital's newborn services that are designated as ~~both~~ either specialty level ~~and~~ or subspecialty level as defined in ~~subdivision D 2 of 12VAC5-410-440~~ 12VAC5-410-443 B 3 and B 4 of the [~~Rules and~~] Regulations for the Licensure of Hospitals [in Virginia].

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

"Newborn services" means care for infants in one or more of the service levels designated in 12VAC5-410-443 B of the [~~Rules and~~] Regulations for the Licensure of Hospitals [in Virginia].

"OAE" means an objective, physiologic response from the cochlea. This term may include transient evoked otoacoustic emissions and distortion product otoacoustic emissions.

["Other birthing place or center" means a place or facility outside of a hospital that provides maternity services.]

"Parent" means ~~(i)~~ a biological or adoptive parent ~~who has legal custody of a child, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a child regularly resides; (iii) a person judicially appointed as a legal guardian of a child; 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~~ or a stepparent.

"Part C" means the state early intervention [services] program that provides medically necessary speech and language therapy, occupational therapy, physical therapy, and assistive technology services and devices for [~~dependents~~ children] from birth to age three who are [~~certified by the Department of Behavioral Health and Developmental Services as~~] eligible for services under Part C of the Individuals with Disabilities Education Act [~~of 2004~~] (20 USC §§ 1431-1444) [and Virginia law].

"Primary ~~medical~~ health care provider" means the person to whom the infant will go for ~~routine medical~~ primary health care following hospital discharge.

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

"Risk ~~factor~~ indicator" means a factor known to place an infant at increased risk for being born with or developing a hearing loss~~, including, but not limited to, any one of the following:~~.

~~1. Family history of hereditary, childhood sensorineural hearing loss;~~

~~2. In utero infection (e.g., cytomegalovirus, rubella, herpes, toxoplasmosis, syphilis);~~

~~3. Craniofacial anomalies including those with morphological abnormalities of the pinna and ear canal;~~

~~4. Birthweight less than 1500 grams;~~

~~5. Hyperbilirubinemia at a serum level requiring exchange transfusion;~~

~~6. Bacterial meningitis;~~

~~7. Apgar scores of 0 to four at one minute or 0 to six at five minutes;~~

~~8. Ototoxic medications, including but not limited to the aminoglycosides, used in multiple courses or in combination with loop diuretics;~~

~~9. Mechanical ventilation lasting five days or longer;~~

~~10. Stigmata or other findings associated with a syndrome known to include a sensorineural hearing loss, a conductive hearing loss, or both;~~

~~11. Neurofibromatosis Type II; and~~

~~12. Persistent pulmonary hypertension of the newborn (PPHN).~~

["Title V" means the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Services Block Grant (Title V of the Social Security Act).]

"Virginia Hearing Impairment Identification and Monitoring System" means a coordinated and comprehensive group of

services including education; screening; follow up; diagnosis; appropriate early intervention including treatment, therapy, training, and education; and program evaluation managed by the department's Virginia Early Hearing Detection and Intervention Program for safeguarding the health of children born in Virginia.

12VAC5-80-20. ~~Authority for regulations.~~ (Repealed.)

~~Sections 32.1-64.1 and 32.1-64.2 of the Code of Virginia direct the commissioner to establish and maintain a system for the purpose of identifying and monitoring infants with hearing loss and directs the Board of Health to promulgate the regulations necessary for implementation of the system.~~

12VAC5-80-30. ~~Purpose of chapter.~~ (Repealed.)

~~This chapter is designed to provide consistent guidelines for implementation of this system in order to assure that infants with hearing loss are identified at the earliest possible age and that they receive appropriate, early intervention.~~

12VAC5-80-40. ~~Administration and application of chapter.~~ (Repealed.)

~~A. This chapter is promulgated to implement the system and amended as necessary by the State Board of Health. The State Health Commissioner or his designee is charged with its administration, and the Virginia Department of Health shall provide the staff necessary for its implementation.~~

~~B. This chapter has general application throughout the Commonwealth.~~

12VAC5-80-75. Risk indicators associated with hearing loss.

A. The Virginia EHDI program shall maintain a list of specific risk indicators consistent with, but not necessarily identical to, the most recent recommendations from the Joint Committee on Infant Hearing to identify infants at risk of hearing loss.

B. The Virginia EHDI Program Advisory Group shall provide guidance with the development and maintenance of the list of specific risk indicators.

C. The list of specific risk indicators shall be maintained [in] a guidance document, which shall be reviewed at a minimum biennially. The list of specific risk indicators may be changed or amended more frequently as needed to reflect changes in standards of care or updates to Joint Committee on Infant Hearing recommendations.

D. The guidance document shall contain specific assessment and reporting criteria for the following general categories of risk indicators associated with hearing loss:

1. Family history of permanent childhood hearing loss;

2. Caregiver concerns;

3. In utero and post natal infections;

4. Neonatal intensive care services;

5. Head trauma and craniofacial anomalies;

6. Syndromes, neurodegenerative disorders, and sensory motor neuropathies;

7. Stigmata or other physical findings associated with certain syndromes;

8. Ototoxic medications, treatments, and chemotherapies; and

9. Other indicators as needed.

E. All infants born in Virginia hospitals shall be assessed prior to hospital discharge after birth for risk indicators associated with hearing loss as outlined in this chapter and the corresponding guidance document.

12VAC5-80-80. Responsibilities of the chief medical officer of hospitals.

~~Hospitals with newborn nurseries and hospitals with neonatal intensive care services~~ The chief medical officer of a hospital providing newborn services or his designee shall:

~~1. Prior to discharge after birth, but no later than three months of age, screen the hearing, in both ears, of all infants using objective physiologic measures. The methodology used for hearing screening shall have a false-positive rate and false-negative rate no greater than those recommended by the American Academy of Pediatrics in "Newborn and Infant Hearing Loss: Detection and Intervention" (Pediatrics Vol. 103, No. 2, February 1999). If the error rates exceed these recommendations, the hospital shall examine and modify its hearing screening methodology to reduce its error rates below these maximum rates;~~

1. Cause all infants to be given a hearing screening test prior to discharge after birth as appropriate for the level of newborn services provided as defined in 12VAC5-410-443 B of the [~~Rules and~~] Regulations for the Licensure of Hospitals [in Virginia];

a. Infants in general or intermediate newborn services shall have both ears screened [at the same time] for hearing using either ABR or OAE testing prior to discharge after birth, but no later than one month of age.

b. Infants in neonatal intensive care services who receive this level of newborn service care for more than five days shall have both ears screened [at the same time] using ABR testing prior to discharge after birth or transfer to a lower level of newborn services. Infants should receive newborn hearing screening as early as development or medical stability will permit such screening. The hearing screening performed for infants requiring neonatal intensive care services for more than five days using ABR testing shall be reported as the initial hearing screen regardless of whether the infant is transferred to another lower level of newborn services within the same facility or to another facility.

c. Infants in neonatal intensive care services who receive this level of newborn service care for five days or less shall have both ears screened [at the same time] for

hearing using either ABR or OAE testing prior to discharge after birth, but no later than one month of age.

2. Identify all infants who fail hearing screening in one or both ears;

a. Infants who fail hearing screening in one or both ears using ABR testing shall not be rescreened using OAE testing. These infants shall be referred for an audiological evaluation.

b. Infants who fail hearing screening in one or both ears using OAE testing may be rescreened using ABR testing. If the infant fails subsequent ABR testing in one or both ears, the infant shall be referred for an audiological evaluation.

3. Identify all infants not receiving an appropriate hearing screening test;

a. For infants who did not receive a hearing screening test due to transfer to another facility, written notification shall be made upon transfer to the [~~healthcare~~ health care] provider in charge of the infant's care that testing was not completed. The hospital discharging the infant after birth is responsible for conducting an appropriate hearing screening test, except for infants who have been transferred to a lower level of newborn service care from another facility providing neonatal intensive care services to that infant for more than five days.

~~2. If an infant is missed~~ b. For infants who did not receive a hearing screening test prior to discharge after birth, inform the parent prior to discharge of the need for hearing screening and provide a mechanism by which screening can occur at no additional cost to the family~~;~~.

c. For infants who did not receive screening due to refusal by the parent or guardian because the screening conflicts with religious convictions, documentation shall be made in the medical record.

4. Cause all infants to be assessed for risk indicators associated with hearing loss prior to discharge after birth as defined in 12VAC5-80-75. For infants who are found to have one or more risk indicators associated with hearing loss, inform the parent of the need for a diagnostic audiological assessment by 24 months of age.

~~3. Prior to discharge, give~~ 5. Provide written information to the parent or guardian of each infant that includes purposes and benefits of newborn hearing screening, risk indicators of hearing loss, procedures used for hearing screening, results of the hearing screening, ~~the~~ recommendations for further testing, ~~and~~ where ~~the~~ further testing can be obtained, and contact information for the Virginia EHDI program;

~~4. Give written information to~~ 6. Notify the infant's primary ~~medical~~ health care provider, within two weeks of discharge after birth, [of] the status of the hearing screening including if the infant was not tested, ~~that includes~~ procedures used for hearing screening, ~~the limitations of screening procedures~~ identified risk indicators associated with hearing loss as defined in 12VAC5-80-75, the results of the hearing screening, and the recommendations for further testing in writing or through an electronically secure method that meets all applicable state and federal privacy laws;

~~5. Within one week of discharge, complete the Virginia Department of Health report~~ 7. Provide the department with information, as required by the board pursuant to § 32.1-64.1 F of the Code of Virginia and in a manner devised by the department, which may be electronic, ~~on each infant who does not pass the hearing screening and send it to the Virginia Department of Health;~~ on the hearing screening and risk indicator status of infants born at their hospital. This information shall be provided within two weeks of discharge after birth unless otherwise stated and includes, but may not be limited to:

a. Demographic information on infants including name, date of birth, race, ethnicity, and gender;

b. Primary contact information including address, telephone [number], and relationship type;

c. Primary [~~healthcare~~ health care] provider name, address [,] and telephone [number];

d. Risk indicators identified as defined in 12VAC5-80-75;

e. Special circumstances regarding infants as needed by the department to provide follow-up;

f. Screening methodology used, date screened, and both right and left ear results;

g. Screening status for pass with risk indicator, fail, unable to test, refusal, and inconclusive results;

h. Status of infants not screened prior to discharge that includes, but may not be limited to, infants who were transferred to other facilities and parents who refused screening;

i. Hearing rescreening information including date, type of screening methodology used, results in both left and right ears, and further recommendations within two weeks after the hospital rescreening date; and

j. Confirmatory data on the status of all infants born in the hospital facility. The department shall receive confirmation that infants not reported as passed with risk, failed, transferred, refused testing, not tested prior to discharge, expired, or other final disposition have had a negative assessment for risk indicators and that physiological hearing screening was conducted with passing results in both ears within 30 days after birth;

~~6. On a monthly basis, send to the Virginia Department of Health a report of the total number of discharges, the total number of infants who passed the newborn hearing screening, the total number who failed, and the total~~

~~number not tested due to parents' exercise of their rights under § 32.1-64.1 H of the Code of Virginia; and~~

~~7.~~ 8. Report to the ~~Virginia Department of Health~~ department, on a yearly basis, hospital specific information including the test procedures used by the newborn hearing screening program, the name of the program director, the name of the advising audiologist, equipment calibration records, screening protocols, and referral procedures~~.~~;

9. Develop written policies and procedures to implement hearing screening in their facility in accordance with 12VAC5-80 including separate protocols for specialty and subspecialty newborn services; and

10. [~~Assure~~ Ensure] that training of staff on newborn hearing screening test procedures, follow up, and reporting requirements is implemented in a way that an adequately trained and knowledgeable workforce is maintained to conduct hearing screening program requirements.

12VAC5-80-85. Responsibilities of other birthing places or centers.

The chief medical officer of other birthing places or centers or his designee or the attending practitioner shall:

1. Cause all infants to be assessed for risk indicators associated with hearing loss as defined in 12VAC5-80-75;

2. Provide written information to the parent or guardian of each infant that includes purposes and benefits of newborn hearing screening, risk indicators for hearing loss, procedures used for hearing screening, providers where hearing screening can be obtained, and contact information for the Virginia EHDI program;

3. Notify the infant's primary [~~healthcare~~ health care] provider, within two weeks after birth, of the status of the hearing screening including if the infant was not tested, identified risk indicators associated with hearing loss as defined in 12VAC5-80-75, and the recommendations for testing in writing or through an electronically secure method that meets all applicable state and federal privacy laws; and

4. Provide the department with information, as required by the board pursuant to § 32.1-64.1 F of the Code of Virginia and in a manner devised by the department on the hearing screening and risk indicator status of infants born at [~~their~~ the other] birthing [place or] center. This information shall be provided within two weeks after birth unless otherwise stated and includes, but may not be limited to:

a. Demographic information on infants including name, date of birth, race, ethnicity, and gender;

b. Primary contact information including address, telephone [number], and relationship type;

c. Primary [~~healthcare~~ health care] provider name, address [,] and telephone [number];

d. Risk indicators identified as defined in 12VAC5-80-75;

e. Special circumstances regarding infants as needed by the department to provide follow-up;

f. Screening methodology used, date screened, and both right and left ear results if applicable;

g. Screening status for pass with risk indicator, failures, unable to test, refusals, and inconclusive results if applicable;

h. Status of infants not screened that includes, but may not be limited to, infants who were transferred to other facilities and parents who refused screening;

i. Hearing rescreening information including date, type of screening methodology used, results in both left and right ears, and further recommendations within two weeks after the rescreening date if applicable; and

j. Confirmatory data on the status of all infants born in the birthing place or center. The department shall receive confirmation that infants not reported with a screening status have had a negative assessment for risk indicators and have been referred for a hearing screening.

12VAC5-80-90. ~~Responsibilities of the Virginia Department of Health~~ Scope and content of Virginia Early Hearing Detection and Intervention Program.

~~The Virginia Department of Health shall:~~

A. The mission of the Virginia EHDI program is to identify hearing loss at the earliest possible age and to assure that appropriate early intervention services are received to reduce the risk of developmental delays.

B. The scope of the Virginia EHDI program shall include the following:

1. Provide hospitals and [other] birthing [places or] centers with a secure reporting system, which may be electronic, that meets all applicable federal and state privacy [~~statutes~~ laws]. This electronic system may include existing demographic data captured by other department population-based systems and the commissioner may authorize hospitals required to report to view existing data to facilitate accurate reporting and increase the department's ability to conduct successful follow up and identify infants at risk for hearing loss pursuant to § 32.1-127.1:04 of the Code of Virginia;

~~1.~~ 2. Collect, maintain and evaluate hospital newborn hearing screening data in a database including, but not limited to, initial screening, risk indicators, rescreening, and diagnostic audiological evaluations, in a secure data management information system;

~~2.~~ 3. Provide follow-up for ~~all~~ infants ~~reported~~ whose results indicate screening failure, identified risk indicators, inconclusive or missing results, or other circumstances requiring follow up. Follow-up includes, but is not limited to:

a. Communicating with the parent ~~by mail~~ or guardian for those infants who failed the hearing screening, ~~those~~

~~who had one or more risk factors identified and were not screened prior to discharge,~~ those who were not screened, and those who are at risk for progressive hearing loss in order to advise of the need for audiological services as well as to provide information on locating an approved center that provides diagnostic audiological services or a licensed audiologist;

b. ~~Receiving~~ Communicating with audiologists, hospitals, [other] birthing [places or] centers, primary health care providers, and others as needed to ascertain follow up status and receive results of ~~both the~~ audiological evaluations and ~~the~~ intervention referrals, ~~and adding the information to the database; and~~ including Part C services;

c. Communicating with the parent ~~by mail~~ or guardian for any child found to have a hearing loss in order to provide information about hearing loss and appropriate resources~~;~~ including family-to-family support and referral to the Part C program; and

d. Communicating to the Part C program regarding any child found to have hearing loss in order to facilitate early intervention services;

~~3. Supply the reporting format and written information to hospitals;~~

4. Provide training and technical assistance ~~on this program~~ to hospitals and [other] birthing [places or] centers; ~~and~~

5. Develop and disseminate protocols for hospitals, audiologists, and primary [~~healthcare~~ health care] providers;

6. Develop and disseminate parent education materials;

7. Maintain an approved list of audiological providers meeting program criteria;

~~5. Conduct a review and evaluation of the~~ 8. Evaluate Virginia Hearing Impairment Identification and Monitoring System components, including but not limited to ~~the false positive rate, false negative rate~~ screening, referral ~~rate,~~ and follow-up ~~rate~~ rates, referral mechanisms and ~~effectiveness of~~ tracking~~, and communicating~~ indicators;

9. Communicate critical performance data to hospitals and [other] birthing [places or] centers [~~,~~] on a ~~yearly~~ quarterly basis~~.~~; and

10. Collect and report data required annually for Title V national performance measures, CDC national EHDI goals, and other funding sources as needed that measure how well the system functions.

C. Title V national performance measures and the CDC national EHDI goals, as required by the Government Performance and Results Act (GPRA; Public Law 103-62), shall be used to establish newborn hearing screening goals. [~~The following goals shall change as needed to be consistent with federally required performance measures~~ The goals are]:

1. All infants who are born in Virginia hospitals shall be screened for hearing loss prior to hospital discharge. Residents of Virginia who do not pass screening, do not receive screening, or who have an identified risk indicator shall receive appropriate evaluation, diagnostic, follow up, and early intervention services. Infants who are not residents of Virginia and who do not pass screening, do not receive screening, or who have an identified risk indicator will be referred to their state of residence for appropriate evaluation, diagnostic, follow up, and early intervention services;

2. All infants born in Virginia shall receive a hearing screening prior to one month of age;

3. Infants who are referred shall receive a diagnostic audiological evaluation before three months of age; and

4. All infants identified with a hearing loss shall receive appropriate early intervention services before six months of age.

[The goals shall change as needed to be consistent with federally required performance measures.]

12VAC5-80-95. Responsibilities of persons providing audiological services after discharge.

Persons who provide audiological services and who determine that a child has failed to pass a hearing screening, was not successfully tested, or has a hearing loss shall:

1. Provide the screening or evaluation results, either in writing or in an electronically secure manner, to the parent or guardian and to the child's primary ~~medical~~ health care provider;

2. Send a ~~Virginia Department of Health~~ report including screening methodology, test results, diagnosis, and recommendations to the ~~Virginia Department of Health~~ department, in a manner devised by the department, which may be electronic, within two weeks of the visit;

3. ~~Advise~~ Provide information to the parent [or guardian] about and offer referral for the child to local early intervention or education programs, including the Part C program; and

4. Give resource information to the parent [or guardian] of any child who is found to have a hearing loss, including but not limited to the degrees and effects of hearing loss, communication options, amplification options, the importance of medical follow up, and agencies and organizations, including the Part C program, that provide services to children with hearing loss and their families.

12VAC5-80-130. [~~Responsibilities of~~ Reporting responsibilities to] primary health care providers.

[~~Persons who provide primary healthcare services to infants shall:~~

~~1. Receive hearing screening, risk indicator findings, and evaluation results from hospitals, audiological providers, and the Virginia EHDI program.~~

~~2. Receive information from the Virginia EHDI program regarding available resources to assist practitioners and families whose child is at risk or diagnosed with hearing loss.~~

A. The chief medical officer of a hospital providing newborn services or his designee shall report hearing screening results to the infant's primary health care provider as defined in 12VAC5-80-80.

B. The chief medical officer of another birthing place or center or his designee or the attending practitioner shall report the status of the hearing screening results including if the infant was not tested to the infant's primary health care provider as defined in 12VAC5-80-85.

C. The Virginia EHDI program shall report infants identified with risk indicators for progressive hearing loss as defined in 12VAC5-80-75 and infants identified with hearing loss to the infant's primary health care provider pursuant to § 32.1-64.2 of the Code of Virginia. The Virginia EHDI program shall provide other hearing screening and resource information to the infant's primary health care provider as defined in 12VAC5-80-90.

D. Persons providing audiological services shall report hearing screening and audiological evaluation results to the infant's primary health care provider as defined in 12VAC5-80-95.

E. Reporting hearing screening and audiological evaluation results to primary health care providers may be done through an electronically secure system that meets all applicable federal and state privacy laws.]

12VAC5-80-140. Relationship to the Part C system.

[~~A.~~] The department is a participating agency in the state Part C system as defined in § 2.2-5300 of the Code of Virginia. The Virginia Hearing Impairment Identification and Monitoring System is a component of this statewide system to identify infants and children who may be eligible for Part C early intervention services. The Virginia EHDI program shall develop policies and operating procedures that are consistent with the Individuals with Disabilities Education Act [~~of 2004~~] (20 USC §§ 1431-1444); 34 CFR Part 303; § 2.2-5303 of the Code of Virginia; and the most recent state interagency agreement.

[~~B. The state interagency agreement shall contain policies and procedures related to identification of resources, coordination of services, resolution of interagency disputes, and data exchange activities necessary for the department and the Virginia EHDI program to fulfill responsibilities and implementation activities required as part of the state early intervention system.~~]

FORMS (12VAC5-80)

~~Report of Follow Up (eff. 7/99).~~

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-80)

~~Newborn and Infant Hearing Loss: Detection and Intervention, Pediatrics Vol. 103, No. 2, February 1999, American Academy of Pediatrics.~~

VA.R. Doc. No. R08-1334; Filed October 15, 2013, 10:15 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-180).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 6, 2014.

Agency Contact: Tom Edicola, Director, Program Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-8098, FAX (804) 786-1680, or email tom.edicola@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of 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. Item 300 H of Chapter 890 of the 2011 Acts of Assembly directs DMAS as follows:

> The Department of Medical Assistance Services shall mandate the electronic submission of claims for covered services rendered by participating providers in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof, as well as the use of electronic funds transfer for the payment of such claims to providers. The department shall implement this requirement in a phased approach beginning with providers enrolling on or after October 1, 2011, with expansion to all existing providers by July 1, 2012. The department shall develop a process by which the individual circumstance of a provider may allow for exclusion from the electronic claims mandate without impact on participation, at the sole discretion of the department. The department shall have authority to promulgate emergency regulations to implement this amendment within 280 days from the enactment of this act.

Purpose: This action is not essential to protect the health, safety, or welfare of citizens. It is, however, mandated by law

as cited above. It also promotes improved administrative efficiencies for DMAS, which will reduce some of its operating costs. These regulations are clearly written and easily understandable by the regulated community.

Approximately 84% of all Medicaid claims are currently filed electronically with DMAS. A survey of participating Medicaid providers who submit claims on paper was performed to better understand why claims are filed on paper when electronic filing is available, and to understand any barriers that may exist to filing electronically. The survey found that the main barriers to electronic filing were cost and inadequate technology.

However, a majority of providers indicated that they transact business electronically with commercial carriers and would welcome the change if these barriers could be addressed for Medicaid. In response, DMAS implemented a web-based direct data entry mechanism during the 2nd Quarter of FY 2011 that has allowed for electronic claim submission at no cost to the provider and at a lower cost for the Commonwealth to process these claims. The Appropriations Act of 2011 language mandating the participation of providers via electronic funds transfer and electronic claims submissions is part of an overall strategy to simplify the claims submission process, increase processing efficiency, lower costs for both the Commonwealth and the Virginia Medicaid provider community, and support collaboration and consistency in business practices with other commercial carriers and Medicare.

It costs DMAS $0.475 to process a hard copy paper claim but only $0.192 to process an electronically submitted claim. If a claim is not completed properly and must be returned to the provider for correction, these costs double. During FY 2011, DMAS spent $ 3.7 million to process electronic claims: $ 1.3 to process paper claims and $155,000 to process direct data entry claims.

Substance: The amendments to 12VAC30-20-180 require providers to file claims electronically and make payments via electronic funds transfer. Currently, the State Plan for Medical Assistance (Plan) has no requirements that providers must submit their claims electronically. It is permitted that providers can file claims electronically, but not required. The current Plan also does not provide for providers' payments to be made via electronic funds transfer.

The amendments to 12VAC30-20-180 (Definition of a claim by service) require (i) health care providers that enroll with Medicaid on or after October 1, 2011, to submit electronically all claims for covered services they render in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act; (ii) DMAS to use electronic funds transfer for the payment of such claims to providers; and (iii) all other providers to comply with this electronic submission requirement by July 1, 2012. Amendments also include a provision to permit providers to request exemption from this requirement when they can demonstrate good cause. DMAS has granted exemptions to fewer than 15 providers who have requested exemption from the electronic funds transfer requirement. The reasons for these exemptions have been due to the lack of infrastructure to accommodate electronic claims submission and receipt of payments.

Issues: The primary advantage to the public and the Commonwealth is expected to be the reduction of administrative costs for the processing of providers' claims for Medicaid and FAMIS. There are no disadvantages of this action to the agency or to individual private citizens.

For health care businesses that already electronically file Medicare and other health insurance claims, this action will make it easier for them to file Medicaid claims. For businesses that are not capable of electronically filing (due to lack of infrastructure to support electronic claims submission, for example), provision is made for good cause exceptions to this requirement.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Item 300 H of the 2011 Virginia Appropriations Act, the proposed changes require 1) that fee-for-service Medicaid providers submit their claims electronically for services rendered and 2) that providers participate in electronic funds transfer for the payment of their claims. These changes are already in effect as of July 1, 2012, under the emergency regulations.

Result of Analysis. The benefits 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 at least one change.

Estimated Economic Impact. Pursuant to Item 300 H of the 2011 Virginia Appropriations Act, one of the proposed changes requires that fee-for-service Medicaid providers submit their claims electronically for services rendered. However, the proposed changes allow the Department of Medical Assistance Services (DMAS) to grant a variance for providers having a hardship with electronic filing.

Prior to this change, electronic claim filing was optional. In Fiscal Year (FY) 2011, 19 million or 84% of approximately 22.6 million total claims had been voluntarily filed by electronic means. DMAS anticipates that once the transition is completed, approximately 95% of all claims will be filed electronically while 5.0% will continue to be filed on paper due to variances that may be issued. Thus, the proposed requirement is ultimately estimated to decrease paper claims by 2.5 million and increase electronic claims by the same amount. The FY 2013 costs for paper and electronic claims processing are $0.483 and $0.195 per claim, respectively. In other words, electronic claims are $0.288 cheaper per claim to process. Thus, DMAS can expect to save approximately $711,930 per year in costs for claims processing. One half of this amount represents savings in state funds as 50% of Virginia Medicaid expenditures are funded by the federal

government. The magnitude of the expected savings is subject to change depending on the number of claims filed which is driven by various factors such as increases in member enrollment, decreases in fee-for-service population as a result of Managed Care expansion, and utilization of services.

To facilitate the transition, DMAS, through its claims processing contractor, created a web-based direct data entry mechanism in 2011. The cost of creating this mechanism was fully borne by the contractor without an increase in the contract price. Also, this claims submission mechanism is available to providers at no cost. However, any required modifications to this mechanism will require additional expenditures. DMAS has paid $276,600 for four system enhancements since its inception.

The impact of this change on administrative compliance costs of providers appears to be mixed. According to DMAS, providers with small claims volume and simple procedures may find it easier to file their claims electronically while large volume providers and providers with complicated procedures may experience the opposite effect.

Another proposed change requires participation of providers in electronic funds transfer for the payment of their claims except for good cause shown. In FY 2011, of the approximately 400,000 fund transfers, about 170,000, or 42%, were accomplished by paper checks. In January of 2013, only 9.0% of funds transfers were accomplished by paper checks. DMAS will continue to mail claim detail to its providers in most cases. Thus, only about $5,000 is estimated to be saved in mailing costs by this change. Due to federal funding, only one half of these savings would accrue to the Commonwealth. Providers are also likely to realize some administrative savings due to reduction in time and possible travel involved in depositing paper checks.

Businesses and Entities Affected. The electronic filing and electronic fund transfer requirements apply to approximately 47,000 providers participating in Virginia Medicaid.

Localities Particularly Affected. The proposed regulations do not affect any locality more than others.

Projected Impact on Employment. The proposed changes may reduce demand for labor at small medical providers with simple procedures due to increased efficiencies from electronic filing and to produce savings in provider time and travel costs associated with depositing paper checks. However, large providers with complex procedures may need additional labor to file claims electronically.

Effects on the Use and Value of Private Property. No significant effect on the use and value of private property is expected. The asset value of the payment processing contractor may be negatively impacted as it will experience reduction in its revenues. However, this negative impact may be offset by additional revenues from system enhancements.

Small Businesses: Costs and Other Effects. Most of the approximately 47,000 providers are estimated to be small businesses. The main impact on small businesses is an expected reduction in their administrative costs due to efficiencies expected from electronic claims filing and electronic funds transfer. However, large providers and providers with complex procedures are anticipated to experience inefficiencies due to the proposed electronic claims processing requirement.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations allow variances from the proposed requirements for good cause shown. There is no known alternative that minimizes the adverse impact while accomplishing the same results.

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 department has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning the electronic claims submission requirements in 12VAC30-20-180. The department raises no issues with this analysis.

Summary:

Pursuant to Item 300 H of Chapter 890 of the 2011 Acts of Assembly, the proposed amendments require (i) the 46,957 fee-for-service Medicaid providers to electronically submit their claims for services rendered to Medicaid and FAMIS individuals and (ii) providers' payments to be provided by electronic funds transfers. Proposed amendments allow for

exceptions to these electronic filing/payment requirements when certain specified standards are met and do not affect the eight Medicaid managed care organizations because they do not file individual claims for services but already file electronic encounter data.

12VAC30-20-180. Definition of a claim by service.

A. Claims:

SERVICE	CLAIM
A) Inpatient Hospital	A Bill for Service
B) Outpatient Hospital	A Bill for Service
C) Rural Health Clinic	A Line Item for Service
D) Laboratory and X-Ray	A Line Item of Service
E) Skilled Nursing	A Bill for Service
F) EPSDT	A Bill for Service
G) Family Planning	A Bill for Service or Line Item depending on provider type
H) Physician	A Line Item of Service
I) Other Medical	A Bill for Service or Line Item depending on provider type
J) Home Health	A Bill for Service
K) Clinic	A Line for Service Item
L) Dental	A Line Item of Service
M) Pharmacy	A Line Item of Service
N) Intermediate Care	A Bill for Service
O) Transportation	A Line Item of Service
P) Physical Therapy	A Bill for Service or Line Item depending on provider type
Q) Nurse Midwife	A Line Item of Service
R) Eyeglasses	A Line Item of Service

B. All providers that enroll with Medicaid on or after October 1, 2011, shall submit electronically all claims for covered services they render in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof, and enroll to receive electronic funds transfer (EFT) for payment of those services. All other providers shall comply with this electronic submission requirement by July 1, 2012.

1. Any provider who cannot comply with this electronic claims submission or EFT requirement may request an exception from DMAS for good cause shown.

2. Good cause may include, but is not limited to, (i) the unavailability of the infrastructure necessary to support electronic claims submission in the provider's geographic region; (ii) the absence of a mechanism for electronic submission for the particular claim type, such as in the case of a temporary detention order; (iii) the provider's inability to transact business through a banking institution capable of EFT; or (iv) financial hardship.

VA.R. Doc. No. R13-2789; Filed October 15, 2013, 10:32 a.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-280).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 5, 2013.

Effective Date: December 19, 2013.

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

Basis: Section 32.1-325 of the Code of Virginia grants the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Sections 32.1-324 and 32.1-325 of the Code of Virginia authorize the Director of the Department of Medical Assistance Services 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: This regulatory action is necessary to implement Chapter 506 of the 2011 Acts of Assembly, which allows participants in the MEDICAID WORKS program to earn up to $75,000 while still retaining eligibility for Medicaid benefits. In addition, the amendments fix several unintended inequities that the department discovered after the implementation of the program.

Rationale for Using the Fast-Track Process: These changes to the MEDICAID WORKS program are mandated by Chapter 506 of the 2011 Acts of Assembly or are fixes to unforeseen issues that arose after the program began. The amendments reinforce the purpose of the program to permit Medicaid enrollees who desire to better their lives by going back to work to do so at some level without endangering their Medicaid eligibility. These changes are noncontroversial, and therefore the department has chosen the fast-track rulemaking option for this regulatory action.

Substance: This regulatory action allows participants in the MEDICAID WORKS program to earn up to $75,000 while still retaining eligibility for Medicaid benefits. The amendments also correct an unintended consequence, which came to light after the initial regulations were promulgated, whereby individuals with disabilities, who receive a modest cash benefit (unearned income) from Social Security Disability Insurance (SSDI) and who elect to enroll in MEDICAID WORKS, actually can become ineligible for the MEDICAID WORKS program if their earned income causes their SSDI benefit to increase. While MEDICAID WORKS program participants may currently have gross annual earnings of as much as $44,300, their unearned income may not exceed 80% of the federal poverty level, equaling $745 per month. The entry income level for eligibility into the MEDICAID WORKS program is $745 per month.

This is clearly problematic because the intent of the MEDICAID WORKS program is to encourage Medicaid enrolled individuals to go back to work and earn higher income while retaining Medicaid eligibility. However, achieving higher income can result in a higher SSDI benefit payment that may, in turn, have a significant negative impact by making the individual ineligible for Medicaid. Disregarding any amount of SSDI payment, which increases as a result of work while participating in MEDICAID WORKS, corrects this unforeseen and unfair consequence of the individual succeeding in employment efforts. The amendments also allow for a disregard of any cost of living adjustment (COLA) increases so as not to discontinue Medicaid eligibility.

The amendments correct an additional unintended consequence of the initial regulations whereby an individual with disabilities who experiences a loss of employment through no fault of his own (for example, being laid off) becomes eligible for unemployment insurance benefits and acceptance of this unearned income payment causes the individual to become ineligible for continued Medicaid coverage. Medicaid policy requires that individuals who are eligible for unemployment insurance payments must apply for these cash benefits, which in turn may make the individual ineligible for Medicaid. Again, the intent of the MEDICAID WORKS program is to encourage individuals to go back to work and earn higher income while retaining eligibility for Medicaid. The program has an existing policy in place to allow an individual to remain eligible for MEDICAID WORKS for up to six months if he experiences a loss of employment through no fault of his own. Penalizing the individual for going to work, but then losing his job, is a direct contradiction of the intention for which the program was created.

Issues: These changes may assist employers because this action has the potential to expand the labor pool by adding new employees with disabilities who are proven to be valuable, dependable resources. Individuals with disabilities can have higher income and still retain Medicaid coverage. 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. Pursuant to Chapter 506 of the 2011 Acts of Assembly, one of the proposed changes increases the maximum allowable gross earnings for participation in the Medicaid Works program. The other proposed changes expand the income disregards allowed in the program.

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

Estimated Economic Impact. Virginias Medicaid Works program is a work incentive program offered to individuals with disabilities. The program allows Medicaid enrollees with disabilities to earn higher incomes up to a certain limit without losing their eligibility for Medicaid. The current gross income limit for Medicaid Works participants is $45,468 per year. Chapter 506 of the 2011 Acts of Assembly increased the maximum allowable gross earnings for participation in the Medicaid Works program to the maximum gross income amount allowed by the federal Ticket to Work and Work Incentives Improvement Act, which is $75,000 per year. One of the proposed changes implements the increased income limit passed by the 2011 General Assembly.

The proposed changes also introduce additional income disregards. One of these changes allows a Medicaid Works participant to disregard the increase in their Social Security Disability Insurance (SSDI) as a result of work while participating in the program. According to the Department of Medical Assistance Services (DMAS), working while in the program can actually cause the SSDI benefit to increase which in turn can cause the gross income to increase and render the individual ineligible for Medicaid. The possibility that working may lead to the loss of Medicaid eligibility may currently be discouraging some individuals from participation and undermining the very intent of the program, which is to encourage disabled individuals enrolled in Medicaid to go back to work and earn higher incomes. The proposed changes would also disregard any increase in the SSDI benefit due to cost of living adjustments.

Similarly, if a program participant becomes unemployed due to no fault of his own he is required to apply for unemployment insurance, which may in turn render the individual ineligible for Medicaid. Currently, the program allows participants to remain eligible for up to six months, if loss of employment was due to no fault of their own. The possibility of unintended unemployment causing loss of Medicaid eligibility also has the potential to discourage participation in the program and undermine the intent of the program. The proposed changes would disregard

unemployment insurance benefits while the enrollee is in the six month grace period.

The proposed changes either increase the eligibility income limit or allow more income disregards in the Medicaid Works program, which would allow participants to earn higher incomes without putting their eligibility for the program or for Medicaid at risk. Thus, the proposed changes are expected to help maintain enrollment of current participants by allowing them to earn higher incomes. Thus, the proposed changes are expected to promote the Medicaid Works program, which in turn promotes work among disabled Medicaid enrollees. Once they are allowed to work and earn incomes, they may be able to support themselves and no longer need Medicaid and possibly other public assistance programs. Any reduction in the Medicaid enrollment and/or other public assistance programs would represent an economic benefit as it would reduce state and federal expenditures needed for public assistance. However, the possibility that some of the participants may never be successfully weaned out of Medicaid or other public assistance programs cannot be ruled out. The proposed changes would allow such people to maintain their Medicaid benefits while allowing them to earn higher incomes.

Currently, Medicaid pays $10,017 per person per year for individuals in the Medicaid Works program. According to DMAS, approximately five out of 45 Medicaid Works program participants may be affected by the proposed changes.

Businesses and Entities Affected. The proposed changes are expected to affect five out of 45 Medicaid Works participants.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed changes promote the Medicaid Works program which allows Medicaid enrollees with disabilities to work without losing their eligibility for Medicaid. Thus, an increase in the labor supply may be expected. According to DMAS, there could be five people affected by the proposed changes.

Effects on the Use and Value of Private Property. The proposed changes do not have any direct impact on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed changes do not have any direct effects on small businesses. However, increased labor supply may indirectly benefit small businesses that are hiring.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes do not pose 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, 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 has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding 12VAC30-40, Eligibility Conditions and Requirements, concerning Update to Medicaid Works Income Limit. The agency concurs with this analysis.

Summary:

The amendments implement a change in the Medicaid Buy-In (MBI) program, MEDICAID WORKS, as authorized by Chapter 506 of the 2011 Acts of Assembly. Chapter 506 directs the Department of Medical Assistance Services to increase the maximum allowable gross earnings for participants in MEDICAID WORKS to the maximum gross income amount allowed under the Ticket to Work and Work Incentives Improvement Act that does not trigger the collection of mandatory premiums. This amount is calculated to be $75,000 in gross annual earnings.

The amendments also (i) adjust MEDICAID WORKS policy to mitigate the negative impact (loss of Medicaid eligibility) of higher earned income or higher unearned income as a result of participating in this work incentive program and (ii) enable a disregard for any increase in the amount of unearned income in the Social Security Disability Insurance (SSDI) payment resulting from employment as a worker with disabilities eligible for assistance under the Ticket to Work and Work Incentives Improvement Act, as a result of a cost of living adjustment to the SSDI payment, or for any unemployment insurance payments received by an

enrollee as a result of loss of employment through no fault of his own.

12VAC30-40-280. More liberal income disregards.

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the federal poverty level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed $5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the federal poverty level (as revised annually in the Federal Register) is disregarded.

D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

G. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their earnings while maintaining eligibility for Medicaid must establish Work Incentive (WIN) accounts (see 12VAC30-40-290).

1. The Commonwealth shall disregard any increase in the amount of unearned income in Social Security Disability Insurance (SSDI) payment resulting from employment as a worker with disabilities eligible for assistance under § 1902(a)(10)(A)ii(XVI) of the Act, or as a result of a COLA adjustment to the SSDI payment.

2. The Commonwealth shall disregard any amount of unearned income of an enrollee as a result of the receipt of unemployment insurance benefits due to loss of employment through no fault of his own. This disregard shall only apply while an enrollee is in the six-month safety net, or "grace" period.

3. The Commonwealth shall disregard earned income up to ~~200% of the federal poverty level~~ $75,000 for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this earned income disregard, the income is subject to the following provisions:

~~1.~~ a. Only earnings that are deposited into a Work Incentive (WIN) account can be disregarded for eligibility purposes.

~~2.~~ b. All funds deposited and their source will be identified and registered with the department, for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and/or reporting of these earnings and other information deemed necessary by the department for the proper administration of this provision.

~~3.~~ c. A spouse's income will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

H. For aged, blind and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of income derived from temporary employment with the United States Census Bureau for a decennial census.

I. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII),

1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard income derived from the temporary employment with the United States Census Bureau for a decennial census.

VA.R. Doc. No. R14-3139; Filed October 15, 2013, 10:38 a.m.

Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-226).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-143).

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

Effective Dates: October 10, 2013, through April 9, 2015.

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

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Item 307 LL of Chapter 3 of the 2012 Acts of Assembly, Special Session I, directed the Department of Medical Assistance Services (DMAS) to make programmatic changes in the provision of community mental health services to ensure appropriate utilization and cost efficiency. Item 307 RR f of Chapter 3 of the 2012 Acts of Assembly, Special Session I, directed DMAS to implement a mandatory care coordination model for behavioral health. The goals of Item 307 RR e of the 2012 Acts of Assembly, Special Session I, include the achievement of cost savings and simplification of the administration of community mental health services through the use of the behavioral health services administrator.

The Medicaid covered service that is affected by this action is mental health support services (MHSS). The department always intended this service to have a rehabilitative focus and defines it as "training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment." The application of imprecise eligibility criteria and service definitions has resulted in a misunderstanding by providers of the intent of the MHSS and the slow evolution of MHSS into a companion-like service, rather than a rehabilitative one. This has contributed to an expenditure increase for this service, most of which has been attributed to adult Medicaid individuals. DMAS intends, in this action, to more accurately represent its intentions for this service by clarifying the Medicaid individuals' eligibility criteria, service definitions, and reimbursement requirements. The new limitations help prevent overpayment for similar services, improve the quality of services covered, and clarify for service providers the department's expectations to secure reimbursement. These changes seek to preserve the integrity of the Medicaid system so that it can continue to provide necessary medical services to appropriate individuals.

The emergency amendments include (i) changing the service's name to "mental health skill-building service"; (ii) changing the rate structure to an hourly unit and decreasing the number of hours per day that an individual may receive this service, effective July 1, 2014; (iii) increasing the annual limits, effective July 1, 2014; (iv) prohibiting overlap with similar services; (v) reducing the number of hours of services that may be provided in an assisted living facility and Level A or Level B group home, effective July 1, 2014; (vi) requiring that providers communicate important information to other health care professionals who are providing care to the same individuals; and (vii) requiring service authorization for crisis intervention and crisis stabilization.

12VAC30-50-226. Community mental health services.

A. Definitions. The following words and terms when used in these regulations shall have the following meanings unless the context clearly indicates otherwise:

"Behavioral Health Services Administrator" or "BHSA" means an entity or entities that manages or directs a behavioral health benefits program under contract with DMAS. DMAS' designated BHSA shall be authorized to constitute, oversee, enroll, and train a provider network; perform service authorization; adjudicate claims; process claims; gather and maintain data; reimburse providers; perform quality assessment and improvement; conduct member outreach and education; resolve member and provider issues; and perform utilization management including care coordination for the provision of Medicaid-covered behavioral health services. Such authority shall include entering into or terminating contracts with providers and imposing sanctions upon providers as described in any contract between a provider and the designated BHSA. DMAS shall retain authority for and oversight of the BHSA entity or entities.

"Certified prescreener" means an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by DBHDS.

"Clinical experience" means practical experience in providing direct services to individuals with mental illness or ~~mental retardation~~ intellectual disabilities or the provision of direct geriatric services or special education services.

Experience may include supervised internships, practicums, and field experience.

"Code" means the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DSM" means the Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), 2013, American Psychiatric Association.

"Human services field" means social work, gerontology, psychology, psychiatric rehabilitation, special education, sociology, counseling, vocational rehabilitation, and human services counseling or other degrees deemed equivalent by ~~DMAS~~ DBHDS.

"Independent living situation" means a situation in which an individual, younger than 21 years of age, is not living with a parent or guardian or in a supervised setting and is providing his own financial support.

"Individual" means the patient, client, or recipient of services set out herein.

"Individual service plan" or "ISP" means a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. The provider shall include the individual in the development of the ISP. To the extent that the individual's condition requires assistance for participation, assistance shall be provided. The ISP shall be updated as the needs and progress of the individual changes.

"Individualized training" means training in functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance with medical management; and monitoring health, nutrition, and physical condition. The training shall be based on a variety of approaches or tools to organize and guide the individual's life planning and shall be rooted in what is important to the individual while taking into account all other factors that affect his life, including effects of the disability and issues of health and safety.

"Licensed Mental Health Professional" or "LMHP" means an individual licensed in Virginia as a physician, a clinical psychologist, a professional counselor, a clinical social worker, or a psychiatric clinical nurse specialist.

~~"Qualified mental health professional" or "QMHP"~~ "Qualified Mental Health Professional-Adult" or "QMHP-A" means a clinician in the human services field as defined in 12VAC35-105-20. ~~who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis. If the QMHP is also one of the defined licensed mental health professionals, the QMHP may perform the services designated for the Licensed Mental Health Professionals unless it is specifically prohibited by their licenses. These QMHPs may be either a:~~

~~1. Physician who is a doctor of medicine or osteopathy and is licensed in Virginia;~~

~~2. Psychiatrist who is a doctor of medicine or osteopathy, specializing in psychiatry and is licensed in Virginia;~~

~~3. Psychologist who has a master's degree in psychology from an accredited college or university with at least one year of clinical experience;~~

~~4. Social worker who has a master's or bachelor's degree from a school of social work accredited or approved by the Council on Social Work Education and has at least one year of clinical experience;~~

~~5. Registered nurse who is licensed as a registered nurse in the Commonwealth and has at least one year of clinical experience; or~~

~~6. Mental health worker who has at least:~~

~~a. A bachelor's degree in human services or a related field from an accredited college and who has at least one year of clinical experience;~~

~~b. Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as of January 1, 2001;~~

~~c. A bachelor's degree from an accredited college in an unrelated field with an associate's degree in a human services field. The individual must also have three years clinical experience;~~

~~d. A bachelor's degree from an accredited college and certification by the International Association of Psychosocial Rehabilitation Services (IAPSRS) as a Certified Psychiatric Rehabilitation Practitioner (CPRP);~~

~~e. A bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field. The individual must also have three years clinical experience; or~~

~~f. Four years clinical experience.~~

"Qualified Mental Health Professional-Child" or "QMHP-C" means the same as defined in 12VAC35-105-20.

"Qualified paraprofessional in mental health" or "QPPMH" means an individual who meets at least one of the following criteria:

1. Registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as an Associate Psychiatric Rehabilitation Provider (APRP), as of January 1, 2001.

2. Has an associate's degree in one of the following related fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of experience providing direct services to persons with a diagnosis of mental illness.

3. An associate's or higher degree, in an unrelated field and at least three years experience providing direct services to persons with a diagnosis of mental illness, gerontology clients, or special education clients. The experience may include supervised internships, practicums and field experience.

4. A minimum of 90 hours classroom training in behavioral health and 12 weeks of experience under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of clinical experience (including the 12 weeks of supervised experience).

5. College credits (from an accredited college) earned toward a bachelor's degree in a human service field that is equivalent to an associate's degree and one year's clinical experience.

6. Licensure by the Commonwealth as a practical nurse with at least one year of clinical experience.

"Review of ISP" means that the provider evaluates the individual's progress toward meeting the individualized service plan objectives and documents the outcome of this review. The goals, objectives, and strategies of the individualized service plan shall be updated to reflect any change in the individual's progress and treatment needs as well as any newly identified problems.

B. Mental health services. The following services, with their definitions, shall be covered: day treatment/partial hospitalization, psychosocial rehabilitation, crisis services, intensive community treatment (ICT), and mental health ~~supports~~ skill-building services. Staff travel time shall not be included in billable time for reimbursement.

1. Day treatment/partial hospitalization services shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals who require coordinated, intensive, comprehensive, and multidisciplinary treatment but who do not require inpatient treatment. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

a. Day treatment/partial hospitalization services shall be time limited interventions that are more intensive than outpatient services and are required to stabilize an individual's psychiatric condition. The services are delivered when the individual is at risk of psychiatric hospitalization or is transitioning from a psychiatric hospitalization to the community.

b. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit behavior that requires repeated interventions or monitoring by the mental health, social services, or judicial system; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and other less intensive services may achieve psychiatric stabilization.

d. Admission and services for time periods longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, psychiatrist, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or psychiatric clinical nurse specialist.

2. Psychosocial rehabilitation shall be provided at least two or more hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, education to teach the patient about the diagnosed mental illness and appropriate medications to avoid complication and relapse, opportunities to learn and use independent living skills and to enhance social and interpersonal skills within a supportive and normalizing program structure and environment. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals: (i) who without these services would be unable to remain in the community or (ii) who meet at least two of the following criteria on a continuing or intermittent basis:

a. Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

b. Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary; or

d. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or significantly inappropriate social behavior.

3. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute psychiatric dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization. Authorization shall be required for Medicaid reimbursement.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that immediate interventions by mental health, social services, or the judicial system are necessary; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or significantly inappropriate social behavior.

b. The annual limit for crisis intervention is 720 units per year. A unit shall equal 15 minutes.

4. Intensive community treatment (ICT), initially covered for a maximum of 26 weeks based on an initial assessment with continuation reauthorized for an additional 26 weeks annually based on written assessment and certification of need by a qualified mental health provider (QMHP), shall be defined as medical psychotherapy, psychiatric assessment, medication management, and case management activities offered to outpatients outside the clinic, hospital, or office setting for individuals who are best served in the community. The annual unit limit shall be 130 units with a unit equaling one hour. Authorization is required for Medicaid reimbursement. To qualify for ICT, the individual must meet at least one of the following criteria:

a. The individual must be at high risk for psychiatric hospitalization or becoming or remaining homeless due to mental illness or require intervention by the mental health or criminal justice system due to inappropriate social behavior.

b. The individual has a history (three months or more) of a need for intensive mental health treatment or treatment for co-occurring serious mental illness and substance use disorder and demonstrates a resistance to seek out and utilize appropriate treatment options.

(1) An assessment that documents eligibility and the need for this service must be completed prior to the initiation of services. This assessment must be maintained in the individual's records.

(2) A service plan must be initiated at the time of admission and must be fully developed within 30 days of the initiation of services.

5. Crisis stabilization services for nonhospitalized individuals shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. Authorization shall be required for Medicaid reimbursement. Authorization may be for up to a 15-day period per crisis episode following a documented face-to-face assessment by a QMHP which is reviewed and approved by an LMHP within 72 hours. The maximum limit on this service is up to eight hours (with a unit being one hour) per day up to 60 days annually. The goals of crisis stabilization programs shall be to avert hospitalization or rehospitalization, provide normative environments with a high assurance of safety and security

for crisis intervention, stabilize individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement. The crisis stabilization program shall provide to recipients, as appropriate, psychiatric assessment including medication evaluation, treatment planning, symptom and behavior management, and individual and group counseling. This service may be provided in any of the following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community-based programs licensed by DBHDS to provide residential services but which are not institutions for mental disease (IMDs). This service shall not be reimbursed for (i) recipients with medical conditions that require hospital care; (ii) recipients with primary diagnosis of substance abuse; or (iii) recipients with psychiatric conditions that cannot be managed in the community (i.e., recipients who are of imminent danger to themselves or others). Services must be documented through daily notes and a daily log of times spent in the delivery of services. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

a. Experience difficulty in establishing and maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

b. Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

c. Exhibit such inappropriate behavior that immediate interventions by the mental health, social services, or judicial system are necessary; or

d. Exhibit difficulty in cognitive ability such that the individual is unable to recognize personal danger or significantly inappropriate social behavior.

6. Mental health ~~support~~ skill-building services shall be defined as training ~~and supports~~ to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. Authorization is required for Medicaid reimbursement. These services may be authorized for up to six consecutive months. This program shall provide training in the following ~~services~~ areas in order to be reimbursed by Medicaid: ~~training in or reinforcement of~~ functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance with medication management; and monitoring health, nutrition, and physical condition. Providers shall be reimbursed only for training activities related to these areas.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals who require individualized training in order to achieve or maintain stability and independence in the community. ~~Services are provided to individuals who without these services would be unable to remain in the community. The individual must have two of the following criteria on a continuing or intermittent basis:~~

~~(1) Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization or homelessness or isolation from social supports;~~

~~(2) Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized~~;

~~(3) Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary; or~~

~~(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.~~

b. ~~The individual must demonstrate functional impairments in major life activities. This may include individuals with a dual diagnosis of either mental illness and mental retardation, or mental illness and substance abuse disorder.~~ Individuals ages 21 and over shall meet all of the following criteria in order to be eligible to receive mental health skill-building services:

(1) The individual shall have one of the following as a primary, Axis I DSM diagnosis:

(a) Schizophrenia or other psychotic disorder as set out in the DSM.

(b) Major Depressive Disorder – Recurrent, Bipolar I, or Bipolar II.

(c) Any other Axis I mental health disorder that a physician has documented specific to the identified individual within the past year and that includes all of the following: (i) is a serious mental illness, (ii) results in severe and recurrent disability, (iii) produces functional limitations in the individual's major life activities that are documented in the individual's medical record, and (iv) requires individualized training for the individual in order to achieve or maintain independent living in the community.

(2) The individual shall require individualized training in acquiring basic living skills such as symptom management, adherence to psychiatric and medication treatment plans, development and appropriate use of social skills and personal support system, personal hygiene, food preparation, or money management.

(3) The individual shall have a prior history of any of the following: psychiatric hospitalization, residential crisis stabilization, intensive community treatment (ICT) or program of assertive community treatment (PACT) services, placement in a psychiatric residential treatment facility (RTC-Level C), or temporary detention order (TDO), pursuant to § 37.2-809 B of the Code of Virginia, evaluation as a result of decompensation related to serious mental illness. This criterion shall be met in order to be initially admitted to services, and not for subsequent authorizations of service.

(4) The individual shall have had a prescription for antipsychotic, mood stabilizing, or antidepressant medications within the 12 months prior to the assessment date. If a physician or other practitioner who is authorized by his license to prescribe medications indicates that antipsychotic, mood stabilizing, or antidepressant medications are medically contraindicated for the individual, the provider shall obtain medical records signed by the physician or other licensed prescriber detailing the contraindication. This documentation shall be maintained in the individual's mental health skill-building services record, and the provider shall document and describe how the individual will be able to actively participate in and benefit from services without the assistance of medication. This criterion shall be met upon admission to services, and not for subsequent authorizations of service.

c. Individuals younger than 21 years of age shall meet all of the following criteria in order to be eligible to receive mental health skill-building services:

(1) The individual shall be in an independent living situation or actively transitioning into an independent living situation. If the individual is transitioning into an independent living situation, services shall only be authorized for up to six months prior to the date of transition;

(2) The individual shall have one of the following as a primary, Axis-I DSM diagnosis:

(a) Schizophrenia or other psychotic disorder as set out in the DSM;

(b) Major Depressive Disorder – Recurrent, Bipolar-I, or Bipolar II; or

(c) Any other Axis I mental health disorder that a physician has documented specific to the identified individual within the past year and that includes all of the following: (i) is a serious mental illness or serious emotional disturbance, (ii) results in severe and recurrent disability, (iii) produces functional limitations in the individual's major life activities that are documented in the individual's medical record, and (iv) requires individualized training for the individual in order to achieve or maintain independent living in the community;

(3) The individual shall require individualized training in acquiring basic living skills such as symptom management, adherence to psychiatric and medication treatment plans, development and appropriate use of social skills and personal support system, personal hygiene, food preparation, or money management;

(4) The individual shall have a prior history of any of the following: psychiatric hospitalization residential crisis stabilization, intensive community treatment (ICT) or program of assertive community treatment (PACT) services, placement in a psychiatric residential treatment facility (RTC-Level C), or TDO evaluation as a result of decompensation related to serious mental illness. This criterion shall be met in order to be initially admitted to services, and not for subsequent authorizations of service; and

(5) The individual shall have had a prescription for antipsychotic, mood stabilizing, or antidepressant medications within the 12 months prior to the assessment date. If a physician or other practitioner who is authorized by his license to prescribe medications indicates that antipsychotic, mood stabilizing, or antidepressant medications are medically contraindicated for the individual, the provider shall obtain medical records signed by the physician or other licensed prescriber detailing the contraindication. This documentation shall be maintained in the individual's mental health skill-building services record, and the provider shall document and describe how the individual will be able to actively participate in and benefit from services without the assistance of medication. This criterion shall be met in order to be initially admitted to services, and not for subsequent authorizations of service.

~~c. The~~ d. Effective July 1, 2014, the yearly limit for mental health ~~support~~ skill-building services is ~~372~~ up to 1300 units per fiscal year. The weekly limit for mental health skill-building services is up to 25 units for those individuals who are not residing in assisted living facilities or group homes (Level A or B). The daily limit is a maximum of five units. Only direct face-to-face contacts and services to the individual shall be reimbursable. Prior to July 1, 2014, the previous limits shall apply. ~~One unit is one hour but less than three hours.~~

e. Effective July 1, 2014, one unit shall be defined as one hour. Providers shall not round up to the nearest unit, and

partial units shall not be reimbursed. Time may be accumulated in quarter-hour increments over the course of one week (Sunday to Saturday) to reach a billable unit. The provider shall clearly document details of the services provided during the entire amount of time billed.

12VAC30-60-143. Mental health services utilization criteria.

A. Utilization reviews shall include determinations that providers meet the following requirements:

1. The provider shall meet the federal and state requirements for administrative and financial management capacity.

2. The provider shall document and maintain individual case records in accordance with state and federal requirements.

3. The provider shall ensure eligible recipients have free choice of providers of mental health services and other medical care under the Individual Service Plan.

B. Day treatment/partial hospitalization services shall be provided following a diagnostic assessment and be authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or licensed clinical nurse specialist-psychiatric. An ISP shall be fully completed by either the LMHP or the QMHP as defined at 12VAC30-50-226 within 30 days of service initiation.

1. The enrolled provider of day treatment/partial hospitalization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of day treatment services.

2. Services shall be provided by an LMHP, a QMHP, or a qualified paraprofessional under the supervision of a QMHP or an LMHP as defined at 12VAC30-50-226.

3. The program shall operate a minimum of two continuous hours in a 24-hour period.

4. Individuals shall be discharged from this service when other less intensive services may achieve or maintain psychiatric stabilization.

C. Psychosocial rehabilitation services shall be provided to those individuals who have experienced long-term or repeated psychiatric hospitalization, or who experience difficulty in activities of daily living and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term services are needed to maintain the individual in the community.

1. Psychosocial rehabilitation services shall be provided following an assessment which clearly documents the need for services. The assessment shall be completed by an LMHP, or a QMHP, and approved by a LMHP within 30 days of admission to services. An ISP shall be completed by the LMHP or the QMHP within 30 days of service initiation. Every three months, the LMHP or the QMHP must review, modify as appropriate, and update the ISP.

2. Psychosocial rehabilitation services of any individual that continue more than six months must be reviewed by an LMHP who must document the continued need for the service. The ISP shall be rewritten at least annually.

3. The enrolled provider of psychosocial rehabilitation services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of psychosocial rehabilitation or clubhouse services.

4. Psychosocial rehabilitation services may be provided by an LMHP, a QMHP, or a qualified paraprofessional under the supervision of a QMHP or an LMHP.

5. The program shall operate a minimum of two continuous hours in a 24-hour period.

6. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

D. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress.

1. The crisis intervention services provider shall be licensed as a provider of outpatient services by ~~DMHMRSAS~~ DBHDS.

2. Client-related activities provided in association with a face-to-face contact are reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. Travel by staff to provide out-of-clinic services is not reimbursable. Crisis intervention may involve contacts with the family or significant others. If other clinic services are billed at the same time as crisis intervention, documentation must clearly support the separation of the services with distinct treatment goals.

7. An LMHP, a QMHP, or a certified prescreener must conduct a face-to-face assessment. If the QMHP performs the assessment, it must be reviewed and approved by an LMHP or a certified prescreener within 72 hours of the face-to-face assessment. The assessment shall document the need for and the anticipated duration of the crisis service. Crisis intervention will be provided by an LMHP, a certified prescreener, or a QMHP.

8. Crisis intervention shall not require an ISP.

9. For an admission to a freestanding inpatient psychiatric facility for individuals younger than age 21, federal regulations (42 CFR 441.152) require certification of the admission by an independent team. The independent team must include mental health professionals, including a physician. Preadmission screenings cannot be billed unless the requirement for an independent team, with a physician's signature, is met.

10. Services must be documented through daily notes and a daily log of time spent in the delivery of services.

E. Case management services (pursuant to 12VAC30-50-226).

1. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. The Medicaid eligible individual shall meet the ~~DMHMRSAS~~ DBHDS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services. Case management shall not be billed for persons in institutions for mental disease.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

6. The provider of case management services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of case management services.

F. Intensive community treatment (ICT) for adults.

1. An assessment which documents eligibility and need for this service shall be completed by the LMHP or the QMHP prior to the initiation of services. This assessment must be maintained in the individual's records.

2. An individual service plan, based on the needs as determined by the assessment, must be initiated at the time of admission and must be fully developed by the LMHP or the QMHP and approved by the LMHP within 30 days of the initiation of services.

3. ICT may be billed if the client is brought to the facility by ICT staff to see the psychiatrist. Documentation must be present to support this intervention.

4. The enrolled ICT provider shall be licensed by the ~~DMHMRSAS~~ DBHDS as a provider of intensive community services or as a program of assertive community treatment, and must provide and make available emergency services 24-hours per day, seven days per week, 365 days per year, either directly or on call.

5. ICT services must be documented through a daily log of time spent in the delivery of services and a description of the activities/services provided. There must also be at least a weekly note documenting progress or lack of progress toward goals and objectives as outlined on the ISP.

G. Crisis stabilization services.

1. This service must be authorized following a face-to-face assessment by an LMHP, a certified prescreener, or a QMHP. This assessment must be reviewed and approved by a licensed mental health professional within 72 hours of the assessment.

2. The assessment must document the need for crisis stabilization services and anticipated duration of need.

3. The Individual Service Plan (ISP) must be developed or revised within 10 business days of the approved assessment or reassessment. The LMHP, certified prescreener, or QMHP shall develop the ISP.

4. Room and board, custodial care, and general supervision are not components of this service.

5. Clinic option services are not billable at the same time crisis stabilization services are provided with the exception of clinic visits for medication management. Medication management visits may be billed at the same time that crisis stabilization services are provided but documentation must clearly support the separation of the services with distinct treatment goals.

6. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization.

7. Providers of crisis stabilization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of outpatient services.

H. Mental health ~~support~~ skill-building services.

1. At admission, an appropriate face-to-face assessment must be ~~made and~~ conducted, documented, and signed and dated by the LMHP ~~or the QMHP indicating that service needs can best be met through mental health support services. The assessment must be performed by the LMHP, or the QMHP, and approved by the LMHP, within 30 days of the date of admission. The LMHP or the QMHP will complete the ISP within 30 days of the admission to this service. The ISP must indicate the specific supports and services to be provided and the goals and objectives to be accomplished. The LMHP or QMHP will supervise the care if delivered by the qualified paraprofessional.~~ Providers shall be reimbursed one unit for each assessment utilizing the assessment code. Assessments shall be updated annually.

2. Axis I-V of the psychiatric diagnosis shall be documented as part of the assessment. The LMHP performing the assessment shall document the primary Axis-I diagnosis on the assessment form.

3. The LMHP, QMHP-A, or QMHP-C shall complete, sign, and date the ISP within 30 days of the admission to this service. The ISP shall include documentation of how many days per week and how many hours per week are required to carry out the goals in the ISP. The total time billed for the week shall not exceed the frequency established in the individual's ISP. The ISP shall include the dated signature of the LMHP, QMHP-A, or QMHP-C and the individual. The ISP shall indicate the specific training and services to be provided, the goals and objectives to be accomplished, and criteria for discharge as part of a discharge plan that includes the projected length of service.

~~2.~~ 4. Every three months, the LMHP ~~or the QMHP must~~ , QMHP-A, or QMHP-C shall review with the individual, modify as appropriate, and update the ISP. This review shall be documented in the record, as evidenced by the dated signatures of the LMHP, QMHP-A, or QMHP-C and the individual. The ISP must be rewritten at least annually.

5. The ISP shall include discharge goals that will enable the individual to achieve and maintain community stability and independence. The ISP shall fully support the need for interventions over the length of the period of service requested from the service authorization contractor.

6. Reauthorizations for service shall only be granted if the provider demonstrates to the service authorization contractor that the individual is benefitting from the service as evidenced by updates and modifications to the ISP that demonstrate progress toward ISP goals and objectives.

7. If the provider knows or has reason to know of the individual's non-adherence to a regimen of prescribed medication, medication adherence shall be a goal in the individual's ISP. If the care is delivered by the qualified paraprofessional, the supervising LMHP, QMHP-A, or QMHP-C shall be informed of any medication regimen non-adherence. The LMHP, QMHP-A, or QMHP-C shall coordinate care with the prescribing physician regarding any medication regimen non-adherence concerns. The provider shall document the following minimum elements of the contact between the LMHP, QMHP-A, or QMHP-C and the prescribing physician: (i) name and title of caller, (ii) name and title of professional who was called, (iii) name of organization that the prescribing professional works for, (iv) date and time of call, (v) reason for care coordination call, (vi) description of medication regimen issue or issues that were discussed, and (vii) resolution of medication regimen issue or issues that were discussed.

8. The provider shall document evidence of the individual's prior psychiatric services history, as required by 12VAC30-50-226 B 6 b (3) and 12VAC30-50-226 B 6 c (4), by contacting the prior provider or providers of such health care services after obtaining written consent from the individual. The provider shall document the following minimum elements: (i) name and title of caller, (ii) name and title of professional who was called, (iii) name of organization that the professional works for, (iv) date and time of call, (v) specific placement provided, (vi) type of treatment previously provided, (vii) name of treatment provider, and (viii) dates of previous treatment. Family member statements shall not suffice to meet this requirement.

9. The provider shall document evidence of the psychiatric medication history, as required by 12VAC30-50-226 B 6 b (4) and 12VAC30-50-226 B 6 c (5), by maintaining a photocopy of prescription information from a prescription bottle or by contacting a prior provider of health care services or pharmacy or after obtaining written consent from the individual. The current provider shall document the following minimum elements: (i) name and title of caller, (ii) name and title of prior professional who was called, (iii) name of organization that the professional works for, (iv) date and time of call, (v) specific prescription confirmed, (vi) name of prescribing physician, (vii) name of medication, and (viii) date of prescription.

~~3.~~ 10. Only direct face-to-face contacts and services to ~~individuals~~ an individual shall be reimbursable.

~~4.~~ 11. Any services provided to the client that are strictly academic in nature shall not be billable. These include, but are not limited to, such basic educational programs as instruction in reading, science, mathematics, or GED.

~~5.~~ 12. Any services provided to clients that are strictly vocational in nature shall not be billable. However, support activities and activities directly related to assisting a client to cope with a mental illness to the degree necessary to develop appropriate behaviors for operating in an overall work environment shall be billable.

~~6.~~ 13. Room and board, custodial care, and general supervision are not components of this service.

~~7. This service is not billable for individuals who reside in facilities where staff are expected to provide such services under facility licensure requirements.~~

~~8.~~ 14. Provider qualifications. The enrolled provider of mental health ~~support~~ skill-building services must be licensed by ~~DMHMRSAS~~ DBHDS as a provider of ~~supportive in-home services, intensive community treatment, or as a program of assertive community treatment~~ mental health skill-building services. Individuals employed or contracted by the provider to provide mental health ~~support~~ skill-building services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations. Mental health skill-building services shall be provided by either an LMHP, QMHP-A, QMHP-C, or QMHPP. The LMHP, QMHP-A, or QMHP-C will supervise the care weekly if delivered by the qualified paraprofessional. Documentation of supervision shall be maintained in the mental health skill-building services record.

~~9.~~ 15. Mental health ~~support~~ skill-building services, which may continue for up to six consecutive months, must be reviewed and renewed at the end of the ~~six month~~ period of authorization by an LMHP who must document the continued need for the services.

~~10.~~ 16. Mental health ~~support~~ skill-building services must be documented through a daily log of time involved in the delivery of services and a minimum of a weekly summary note of services provided. The provider shall clearly document services provided to detail what occurred during the entire amount of the time billed.

17. If mental health skill-building services are provided in a group home (Level A or B) or assisted living facility, effective July 1, 2014, there shall be a yearly limit of up to 1040 units per fiscal year and a weekly limit of up to 20 units per week, with at least half of each week's services provided outside of the group home or assisted living facility. There shall be a daily limit of a maximum of five units. Prior to July 1, 2014, the previous limits shall apply. The ISP shall not include activities that contradict or duplicate those in the treatment plan established by the group home or assisted living facility. The provider shall attempt to coordinate mental health skill-building services with the treatment plan established by the group home or assisted living facility and shall document all coordination activities in the medical record.

18. Limits and exclusions.

a. Group home (Level A or B) and assisted living facility providers shall not serve as the mental health skill-building services provider for individuals residing in the providers' respective group home or assisted living facility.

b. Mental health skill-building services shall not be reimbursed for individuals who are receiving in-home residential services or congregate residential services through the Intellectual Disability or Individual and Family Developmental Disabilities support waiver.

c. Mental health skill-building services shall not be reimbursed for individuals who are also receiving independent living skills services, the Department of Social Services' independent living program (22VAC40-151-10 et seq.), independent living services (22VAC40-151-10 et seq. and 22VAC40-131-10 et seq.), or independent living arrangement (22VAC40-131-10 et seq.) or any Comprehensive Services Act for At-Risk Youth and Families-funded independent living skills programs.

d. Mental health skill-building services shall not be available to individuals who are receiving treatment foster care (12VAC30-130-900 et seq.).

e. Mental health skill-building services shall not be available to individuals who reside in Intermediate Care Facilities for Individuals with Intellectual Disabilities or hospitals.

f. Mental health skill-building services shall not be available to individuals who reside in nursing facilities, except for up to 60 days prior to discharge. If the individual has not been discharged from the nursing facility during the 60-day period of services, mental health skill-building services shall be terminated and no further service authorizations shall be available to the individual unless a provider can demonstrate and document that mental health skill-building services are necessary. Such documentation shall include facts demonstrating a change in the individual's circumstances and a new plan for discharge requiring up to 60 days of mental health skill-building services.

g. Mental health skill-building services shall not be available for residents of Residential Treatment Centers-Level C facilities, except for the assessment code H0032 (modifier U8) in the seven days immediately prior to discharge.

h. Mental health skill-building services shall not be reimbursed if personal care services or attendant care services are being received simultaneously, unless justification is provided why this is necessary in the individual's mental health skill-building services record. Medical record documentation shall fully substantiate the need for services when personal care or attendant care services are being provided. This applies to individuals who are receiving additional services through the Intellectual Disability Waiver (12VAC30-120-1000 et seq.), Individual and Family Developmental Disabilities Support Waiver (12VAC30-120-700 et seq.), and the Elderly or Disabled with Consumer Direction Waiver (12VAC30-120-900 et seq.) and EPSDT services (12VAC30-50-130).

i. Mental health skill-building services shall not be duplicative of other services. Providers have a responsibility to ensure that if an individual is receiving additional therapeutic services that there will be coordination of services by either the LMHP, QMHP-A, or QMHP-C to avoid duplication of services.

j. Individuals who have organic disorders, such as delirium, dementia, or other cognitive disorders not elsewhere classified, will be prohibited from receiving mental health skill-building services unless their physicians issue a signed and dated statement indicating that the individuals can benefit from this service.

k. Individuals with disorders not identified in Axis I, such as personality disorders and other mental health disorders that may lead to chronic disability, will not be excluded from the mental health skill-building services eligibility criteria provided that the individual has a primary Axis-I DSM diagnosis from the list included in 12VAC30-50-226 B 6 b (1) or 12VAC30-50-226 B 6 c (2) and that the provider can document and describe how the individual is expected to actively participate in and benefit from services.

l. Except as noted in subdivision 17 of this subsection and in 12VAC30-50-226 B 6 d, the limits described in this regulation, and all others identified in 12VAC30-50-226, shall apply to all service authorization requests submitted to DMAS as of the effective date of this regulation. As of the effective date of these regulations, all annual, weekly, and daily limits, and all reimbursement for services, shall apply to all services described in 12VAC30-50-226 regardless of the date upon which service authorization was obtained.

VA.R. Doc. No. R14-3451; Filed October 10, 2013, 5:32 p.m.

◆ ◆

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final 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: **14VAC5-50. Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities (amending 14VAC5-50-10 through 14VAC5-50-50; adding 14VAC5-50-35).**

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

Effective Date: January 1, 2015.

Agency Contact: Raquel Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The amendments address the National Association of Insurance Commissioners' December 2012 adoption of the revised Model Rule for Recognizing a New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities. The revised model adds the 2012 Individual Annuity Reserving Mortality Table (2012 IAR Mortality Table). The amendments include (i) adding the 2012 IAR Mortality Table to the list of recognized mortality tables; (ii) adding definitions for Period Table, Generational Mortality Table, 2012 IAR Mortality Table, 2012 IAM Period Table, and Projection Scale G2; and (iii) establishing when and how the 2012 IAR Mortality Table may be used.

The only change from the proposed version of the rules has been to the individual annuity or pure endowment contracts section (14VAC5-50-30) making the use of the 2012 IAR Mortality Table a requirement for contracts issued on or after January 1, 2015, and not January 1, 2014, as was originally proposed. The effective date of the amendments will be January 1, 2015.

AT RICHMOND, OCTOBER 8, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2013-00127

Ex Parte: In the matter of
Amending the Rules Governing New
Annuity Mortality Tables for Use in
Determining Reserve Liabilities for Annuities

ORDER ADOPTING RULES

By Order to Take Notice entered June 21, 2013 ("June 21 Order"), all interested persons were ordered to take notice that subsequent to August 20, 2013, the State Corporation Commission ("Commission") would consider entry of an order to adopt amendments to rules set forth in Chapter 50 of Title 14 of the Virginia Administrative Code, entitled Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities, 14 VAC 5-50-10 et seq. ("Rules"), which amend the Rules at 14 VAC 5-50-10 through 14 VAC 5-50-50 and add a new Rule at 14 VAC 5-50-35. These amendments were proposed by the Bureau of Insurance ("Bureau").

The June 21 Order required that on or before August 20, 2013, any person objecting to the amendments to the Rules shall have filed a request for hearing with the Clerk of the

Commission ("Clerk"). No request for a hearing was filed with the Clerk.

The June 21 Order also required all interested persons to file their comments in support of or in opposition to the amendments to the Rules on or before August 20, 2013. Genworth Financial timely filed comments with the Clerk, to which the Bureau provided a response in the form of a Statement of Position filed with the Clerk on September 17, 2013.

As a result of these comments received, the Bureau recommended that the proposed amendments to the Rules be further revised as follows: amend the Rule at 14 VAC 5-50-30, making the use of the 2012 Individual Annuity Reserving Mortality Table ("2012 IAR Mortality Table") a requirement for contracts issued on or after January 1, 2015, and not January 1, 2014, as originally proposed.

The amendments to Chapter 50 are necessary due to the National Association of Insurance Commissioners' adoption of the revised Model Rule for Recognizing a New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities, which adds the 2012 IAR Mortality Table to the list of recognized mortality tables. The revisions to Chapter 50 include: (i) the addition of the 2012 IAR Mortality Table to the list of recognized mortality tables in 14 VAC 5-50-10; (ii) the addition of definitions for "Period Table," "Generational Mortality Table," "2012 Individual Annuity Reserving Mortality Table" and "2012 IAR Mortality Table," "2012 Individual Annuity Mortality Period Life Table" and "2012 IAM Period Table," and "Projection Scale G2" and "Scale G2" in 14 VAC 5-50-20; (iii) the addition of language in 14 VAC 5-50-30 that sets forth when the 2012 IAR Mortality Table shall be used; (iv) the addition of clarifying language in 14 VAC 5-50-40; (v) the revision of the formula in 14 VAC 5-50-41 that is used to calculate the mortality rate when applying the 1994 Group Annuity Reserving Table; (vi) the revision of 14 VAC 5-50-50 to provide consistency with other severability sections; (vii) the addition of 14 VAC 5-50-35, which explains the application of the 2012 IAR Mortality Table; and (viii) the revision of 14 VAC 5-50-30 making the use of the 2012 IAR Mortality Table a requirement for contracts issued on or after January 1, 2015, and not January 1, 2014, as originally proposed.

NOW THE COMMISSION, having considered this matter, the Bureau's response to the comments, and the Bureau's recommendation to amend and revise the Rules, is of the opinion that the Rules should be adopted as amended and revised.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities that amend the Rules at 14 VAC 5-50-10 through 14 VAC 5-50-50 and add a new Rule at 14 VAC 5-50-35, which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2015.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted, amended, and revised Rules shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the adopted, amended, and revised Rules by mailing a copy of this Order, including a clean copy of the Rules, to all life insurers, burial societies, fraternal benefit societies and qualified reinsurers, as well as to all interested parties.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the adopted, amended, and revised Rules at 14 VAC 5-50-10 through 14 VAC 5-50-50, and new Rule at 14 VAC 5-50-35, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted, amended, and revised Rules on the Commission's website: http://www.scc.virginia.gov/case.

(5) The Bureau shall file with the Clerk an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

14VAC5-50-10. Purpose.

The purpose of this chapter ~~(14VAC5-50-10 et seq.)~~ is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Group Annuity Mortality (1983 GAM) Table, the 1983 Table "a," the Annuity 2000 Mortality Table, the 2012 Individual Annuity Reserving (2012 IAR) Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

14VAC5-50-20. Definitions.

~~As~~ The following words and terms when used in this chapter ~~(14VAC5-50-10 et seq.)~~ shall have the following meanings unless the context clearly indicates otherwise:

"1983 Group Annuity Mortality Table" and "1983 GAM Table" mean that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners (NAIC).

"1983 Table "a"' means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the ~~National Association of Insurance Commissioners~~ NAIC.

"1994 Group Annuity Reserving Table" and "1994 GAR Table" mean that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and adopted as a recognized mortality table for annuities in December ~~1995~~ 1996 by the ~~National Association of Insurance Commissioners~~ NAIC.

"2012 Individual Annuity Mortality Period Life Table" and "2012 IAM Period Table" mean the Period Table containing loaded mortality rates for calendar year 2012. This table contains rates, qx^{2012}, developed by the Society of Actuaries Committee on Life Insurance Research.

"2012 Individual Annuity Reserving Mortality Table" and "2012 IAR Mortality Table" mean that Generational Mortality Table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx^{2012+n}, derived from a combination of the 2012 IAM Period Table and Projection Scale G2, using the methodology stated in 14VAC5-50-35, and adopted as a recognized mortality table for annuities in December 2012 by the NAIC.

"Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and adopted as a recognized mortality table for annuities in December 1996 by the ~~National Association of Insurance Commissioners~~ NAIC.

"Generational Mortality Table" means a mortality table containing a set of mortality rates that decrease for a given age from one year to the next based on a combination of a Period Table and a projection scale containing rates of mortality improvement.

"Period Table" means a table of mortality rates applicable to a given calendar year (the Period).

"Projection Scale G2" and "Scale G2" mean a table of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012. This table was developed by the Society of Actuaries Committee on Life Insurance Research.

14VAC5-50-30. Individual annuity or pure endowment contracts.

A. Except as provided in subsections B and C of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1979.

B. Except as provided in subsection C of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.

C. Except as provided in subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for ~~an~~ any individual annuity or ~~a~~ pure endowment contract issued on or after January 1, 1999.

D. Except as provided in subsection E of this section, the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, [~~2014~~ 2015].

E. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

2. Settlements involving similar actions such as workers' compensation claims; or

3. Settlements of long-term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

14VAC5-50-35. Application of the 2012 IAR Mortality Table.

In using the 2012 IAR Mortality Table, the mortality rate for a person age x in year (2012 + n) is calculated as follows:

$$q_x^{2012+n} = q_x^{2012}(1 - G2_x)^n$$

The resulting q_x^{2012+n} shall be rounded to three decimal places per 1,000 (e.g., 0.741 deaths per 1,000). Also, the rounding shall occur according to the formula above, starting at the 2012 Period Table rate.

For example, for a male age 30, $q_x^{2012} = 0.741$.

$q_x^{2013} = 0.741 * (1 - 0.010) \wedge 1 = 0.73359$, which is rounded to 0.734.

$q_x^{2014} = 0.741 * (1 - 0.010) \wedge 2 = 0.7262541$, which is rounded to 0.726.

A method leading to incorrect rounding would be to calculate q_x^{2014} as $q_x^{2013} * (1 - 0.010)$, or $0.734 * 0.99 = 0.727$. It is incorrect to use the already rounded q_x^{2013} to calculate q_x^{2014}.

14VAC5-50-40. Group annuity or pure endowment contracts.

A. Except as provided in subsections B and C of this section, the 1983 GAM Table, 1983 Table "a," and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or ~~a~~ pure endowment purchased on or after July 1, 1979, under a group annuity or pure endowment contract.

B. Except as provided in subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or ~~a~~ pure endowment purchased on or after January 1, 1987, under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or ~~a~~ pure

endowment purchased on or after January 1, 1999, under a group annuity or pure endowment contract.

14VAC5-50-41. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows:

~~$q_x^{1994+n} = q_x^{1994}(1 - AA_x)^n$~~ $q_x^{1994+n} = q_x^{1994}(1 - AA_x)^n$

where the ~~q_x^{1994}'s~~ q_x^{1994} and ~~AA_x's~~ AA_x are as specified in the 1994 GAR Table.

14VAC5-50-50. Severability.

If any provision of this chapter ~~(14VAC5-50-10 et seq.),~~ or ~~the~~ its application ~~thereof~~ to any person or ~~circumstances~~ circumstance is for any reason held to be invalid by a court, the remainder of ~~the~~ this chapter and the application of ~~such provision~~ the provisions to other persons or circumstances shall not be affected ~~thereby~~.

VA.R. Doc. No. R13-3704; Filed October 9, 2013, 2:27 p.m.

◆ ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-260).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Information:

December 2, 2013 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Board Room 4, Richmond, VA 23233

Public Comment Deadline: January 3, 2014.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth.

Purpose: The proposed amendments address board concerns to increase consumer awareness about the existence of the Virginia Contractor Transaction Recovery Fund. Amending these regulations offers an extra layer of protection to the health, safety, and welfare of the general public. Also, the intent of the planned regulatory action is to review the existing regulations and propose amendments to empower the board to take disciplinary action against licensees who fail to comply with such amendments.

Substance: 18VAC50-22-260 outlines the board's prohibited acts, which includes contract provision requirements. The proposed amendments will expand the terms of the written contract requirements for residential contracting specified within the board's regulations.

Issues: The change includes a requirement that language be added to all residential contracts notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund and adds information on how to contact the board for claim information. This change is advantageous to the consumer as it provides pertinent information regarding a level of protection, currently in the statutes, but often not known to consumers. The addition of contact information gives direction to consumers, who can then contact Virginia Contractor Transaction Recovery Fund staff for assistance in filing a claim or in determining eligibility.

In amending the regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. The proposed amendment will increase consumer awareness about the existence of the Virginia Contractor Transaction Recovery Fund and offer an extra layer of protection to the health, safety, and welfare of the general public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Contractors (Board) proposes to amend its regulations to require that a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the Board for claim information be included in all written contracts for residential contracting services.

Result of Analysis. Benefits likely outweigh costs for this proposed regulatory change.

Estimated Economic Impact. Current regulations include a list of nine specific elements that must be in each written contract for residential contractor projects. The Board proposes to amend this list to also require contractors to include a statement informing consumers of the existence of the Virginia Contractor Transaction Recovery Fund and how to contact the Board for claim information. Board staff reports that this recovery fund is a fund that contractors customers can apply to for reimbursement of monies paid to contractors for work that the contractors then utterly failed to do or does so inadequately that their customers find it necessary to try and recover their money.

Board staff reports that the claims against the recovery fund are a last resort solution for customers after they have sought relief in civil court and have tried to recover their money directly from their contractor through, for example, filing liens. Only after other possible solutions have been exhausted would individuals then be able to apply to this recovery fund to get their money back (up to the statutory limit of $20,000). The recovery fund is funded through monies collected from

contractors upon initial licensure ($25) and when licensure is renewed ($50 biennially). Since 2003, 1,390 claims have been filed against the recovery fund and $14,408,062 has been paid out (average claim of $10,365.51). Board staff also reports that the Board can get back some or all of the money from claims if the claimant later is able to recover money directly from their contractor.

Adding the proposed required language to written contracts may cost contractors a likely small amount initially to reprint existing contracts with the added required language or to print an addendum that includes the required language. This should be a onetime cost, however, and would not be expected to be ongoing once the language is part of their base contract. Contracting customers will benefit from the additional disclosure of existence of the recovery fund and their right to access it.

Businesses and Entities Affected. Board staff reports that, as of February 1, 2013, there are 65,274 contractors that have either a Class A, B or C license in the Commonwealth and that the overwhelming majority of contractors qualify as small businesses. All of these individuals, plus their customers, will likely be affected by this proposed regulatory change.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulations.

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

Effects on the Use and Value of Private Property. The use and value of private property is unlikely to be affected by this proposed regulatory change.

Small Businesses: Costs and Other Effects. Affected small businesses may incur some small additional printing costs initially on account of this regulatory change but are unlikely to incur any recurring costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods that would both further minimize any adverse impact and meet the Boards goal of better informing contracting customers of the recovery fund and their right to access it.

Real Estate Development Costs. This regulatory action is unlikely to affect 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 for Contractors concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

The proposed amendment requires language to be added to all written contracts for residential contracting services that (i) notifies consumers of the existence of the Virginia Contractor Transaction Recovery Fund and (ii) includes information on how to contact the Board for Contractors for claim information.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.

3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.

4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

5. Negligence and/or incompetence in the practice of contracting.

6. Misconduct in the practice of contracting.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

a. When work is to begin and the estimated completion date;

b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;

c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;

d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;

e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

f. Disclosure of the cancellation rights of the parties;

g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;

h. Contractor's name, address, license number, class of license, and classifications or specialty services; ~~and~~

i. ~~Statement~~ A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties~~.~~; and

j. A statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual

has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

VA.R. Doc. No. R13-3390; Filed October 15, 2013, 3:36 p.m.

BOARD OF DENTISTRY

Proposed Regulation

Titles of Regulations: **18VAC60-15. Regulations Governing the Disciplinary Process (adding 18VAC60-15-10, 18VAC60-15-20).**

18VAC60-20. Regulations Governing Dental Practice (repealing 18VAC60-20-10 through 18VAC60-20-352).

18VAC60-21. Regulations Governing the Practice of Dentistry (adding 18VAC60-21-10 through 18VAC60-21-430).

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (adding 18VAC60-25-10 through 18VAC60-25-210).

18VAC60-30. Regulations Governing the Practice of Dental Assistants II (adding 18VAC60-30-10 through 18VAC60-30-170).

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

Public Hearing Information:

January 10, 2014 - 9 a.m. - Perimeter Building Conference Center, 2nd Floor, 9960 Mayland Drive, Henrico VA

Public Comment Deadline: January 11, 2014.

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. Specific regulatory authority for the Board of Dentistry is found in Chapter 27 (§ 54.1-2700et seq.) of the Code of Virginia.

Purpose: All regulations for dentists, dental hygienists, and dental assistants are currently found in one chapter, 18VAC60-20. The purpose of this action is to reorganize the regulation to create a new chapter with common provisions regarding the disciplinary process and three new chapters, one for each of the professions regulated: dentists, dental hygienists, and dental assistants II. More specifically:

1. The two proposed sections of 18VAC60-15 set out provisions for recovery of disciplinary costs in a case in which there is a finding of a violation and for establishment of criteria for delegation of informal fact-finding proceedings to an agency subordinate. The proposed regulations are intended to facilitate the disciplinary process so cases can be adjudicated in a more timely and cost-effective manner. Assessment of costs for violations may deter unprofessional conduct that is detrimental to the health and safety of dental patients.

2. 18VAC60-21 is a reorganization and restatement of current requirements for licensure and practice for dentists. Such requirements are necessary to ensure the health and safety of dental patients, while assuring appropriate access to care by dentists.

3. 18VAC60-25 is a reorganization and restatement of current requirements for licensure and practice for dental hygienists. Such requirements are necessary to ensure the health and safety of dental patients, while assuring appropriate access to care by dental hygienists.

4. 18VAC60-30 contains the provisions for registration and practice regarding dental assistants II (DAII). To ensure the services can be safely provided by a DAII, the regulation specifies the minimal competency that a dental assistant must demonstrate to be registered and authorized to perform expanded duties. Qualifications include specified hours of didactic education, clinical training, and experience and examination in modules for the performance of specific duties delegated under direct supervision. While the applicant will have to demonstrate clinical knowledge and skills to be registered as a DAII, the dentist will have to be present in the facility, will have to examine the patient both before and after treatment by a DAII, and will remain responsible for the care of the patient. Such requirements are necessary to ensure the health and safety of dental patients, while increasing the number of qualified dental personnel and access to care.

Substance: 18VAC60-15 provides for the recovery of disciplinary costs in a case in which there is a finding of a violation and for establishment of criteria for delegation of informal fact-finding to an agency subordinate. The provisions in current 18VAC60-20 that are applicable to the licensure and practice of dentists and oral and maxillofacial surgeons are included in new 18VAC60-21. There are no substantive changes to these regulations, as amended by emergency action pursuant to Chapter 526 of the 2011 Acts of the Assembly requiring the Board of Dentistry to revise its regulations for issuance of permits for dentists who provide or administer conscious/moderate sedation, deep sedation or general anesthesia in a dental office. The provisions in current 18VAC60-20 that are applicable to the registration and practice of dental hygienists and dental assistants II are included in new 18VAC60-25 for dental hygienists and in 18VAC60-30 for dental assistants II. There are no substantive changes to the current regulations governing dental hygienists or dental assistants II.

Issues:

1. 18VAC60-15: The primary advantage of the amendments to the public is the potential to reduce expenditures of the board and its licensees for the investigation and monitoring by assessing a licensee or registrant who has violated law or regulation a portion of the costs the board incurred. Offsetting expenditures relating to discipline will have a positive effect on the board's budget and may result in stability in fees charged to licensees and registrants, which in turn benefits patients of those licensees and registrants. The ability to delegate non-patient care cases to an agency subordinate allows the board to expedite some disciplinary proceedings and meet agency goals for case resolution. There are no disadvantages to the public, the agency, or the Commonwealth.

2. 18VAC60-21: Regulations for the practice of dentistry are necessary to assure minimal competency in the provision of dental services that protect public health and safety. There are no substantive new regulations, but reorganization and clarification should make current requirements more understandable and encourage compliance. There should be no disadvantages to the public. Specificity about practice and qualifications should allow board staff to direct persons with questions about those issues to the regulations. There are no disadvantages of these provisions to the agency or the Commonwealth; registration is required by law.

3. 18VAC60-25: Regulations for the practice of dental hygiene establish the qualifications for licensure and standards of practice. There are advantages to the public if those standards and requirements are reasonable and clearly stated, so practitioners and consumers understand the scope of practice of a hygienist. There should be no disadvantages. Specificity about direction and the levels of supervision should allow board staff to direct persons with questions about those issues to the regulations. There are no disadvantages of these provisions to the agency or the Commonwealth; licensure is required by law.

4. 18VAC60-30: Regulations for dental assistants II became effective March 2, 2011. In promulgating those regulations, the agency stated that the primary advantage to the public is more accessibility for dental care by persons who are qualified by education, training, and examination to perform certain restorative and prosthetic dental functions. The ability of dental practices to provide services to populations of patients is enhanced with dental assistants II and with an increase in the ratio of dentists to dental hygienists and/or dental assistants II from two per dentist to four per dentist. To the extent dental assistants acquire the additional qualifications and credentials for expanded functions as a dental assistant II, the regulation has the potential to improve accessibility and reduce costs. If dental assistants II are appropriately trained and clinically competent, and if the dentist provides direct supervision as specified in regulation, there should be no disadvantages. Specificity about direction and the levels of supervision should allow board staff to direct persons with questions about those issues to the regulations. There are no disadvantages of these provisions to the agency or the Commonwealth; registration is required by law.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to periodic review requirements, the Board of Dentistry (Board) proposes to repeal its regulatory chapter governing all dental practices (18VAC60-20) and replace it with four regulatory chapters: Regulations Governing the

Disciplinary Process (18VAC60-15), Regulations Governing the Practice of Dentistry (18VAC60-21), Regulations Governing the Practice of Dental Hygiene (18VAC60-25) and Regulations Governing the Practice of Dental Assistants II (18VAC60-30). All changes in these replacement regulations are clarifying in nature except for the requirements in the regulations for disciplinary practices (18VAC60-15), which are identical to requirements already proposed in an earlier regulatory action that is in its final stage, and for the requirements for administration of moderate and deep sedation in dental practices and for permitting of dentists that administer moderate or deep sedation. Requirements for moderate and deep sedation in proposed 18VAC60-21 are identical to those in an earlier regulatory action that is in an Emergency/NOIRA stage in the Governor's office.

Result of Analysis. Benefits likely outweigh costs for implementing most of these proposed changes. For some changes in these regulations, there is insufficient information at this time to accurately measure benefits against costs.

Estimated Economic Impact. The current regulatory chapter governs all aspects of dental services; including licensure of dentists, licensure of dental hygienists, licensure of dental assistants II and all disciplinary criteria. The length of this chapter has, however, gotten unwieldy over the years. Because of this, the Board now proposes to repeal 18VAC60-20 and replace it with regulatory chapters for each profession (18VAC60-21, 18VAC60-25 and 18VAC60-30) as well as a separate chapter that lays out the disciplinary process (18VAC60-15). In addition to partitioning the requirements in current dental regulations, the Board proposes to make many amendments to regulatory text. With the exception of 18VAC60-15, which contains new language allowing the Board to recover certain disciplinary costs, and new requirements that dentists who administer moderate or deep sedation get and maintain a sedation permit from the Board, all proposed changes to these regulations are clarifying in nature. No affected entity is likely to incur any additional costs on account of either this regulatory reorganization or the included clarifying changes. Affected entities will, however, benefit from changes that make particular requirements easier to find and from language changes that make regulatory text easier to understand.

Pursuant to Chapter 89 of the 2009 Acts of the Assembly, the Board proposes 18VAC60-15. This regulatory chapter, and the legislation that preceded it, allow the Board to recover up to $5,000 for investigation and monitoring costs in disciplinary cases in which there is a finding of a violation. Licensees who are investigated and who are found to have violated Board regulations may incur costs up to $5,000. Other Board licensees will likely benefit from these regulatory changes because cost recovery by the Board will help mitigate the need for increased fees in the future. The public is also likely to benefit from dentists (and other professionals) who violate the rules having to more directly bear the costs of those violations as this will be more likely to cause these professionals to refrain from violations in the future.

Finally, pursuant to Chapter 526 of the 2011 Acts of the Assembly, the Board proposes new requirements that dentists who administer moderate or deep sedation get and keep a sedation permit. Proposed regulations also require that sedation permits be posted, along with all relevant licenses, in a prominent location in a dentist's office. Board staff reports that training for sedation administration is already required and is not changed in these proposed regulations. Therefore, the only new costs that dentists are likely to incur are the required permits fees. Dentists will incur a fee of $100 for their initial sedation permits. These permits will have to be renewed by the 31st of March each year and the renewal fee will also be $100. Dentists fail to renew their permits on time will also incur a $35 late fee. The legislature and the Board both anticipate that requiring sedation permits will decrease the chance that patients will experience health issues on account of improperly administered or monitored sedation. Since these regulations are not yet in effect, there is no information available on the magnitude of possible benefits that might accrue on account of fewer adverse outcomes for patients. Therefore, there is insufficient information to ascertain whether any benefits will outweigh the costs of obtaining permits that dentists will incur.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently regulates 6,471 dentists, 3 dental teachers, 9 full time faculty, 231 maxillofacial surgeons, 5,136 dental hygienists and 1 dental assistant II. All of these individuals, as well as their patients, 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. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

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

Small Businesses: Costs and Other Effects. Small business dentists will likely incur costs for gaining sedation permits. The fee for initial permitting is $100. The annual renewal fee for permits is also $100 and the fee for late renewal is $35.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is likely no alternate method of regulation that would both further lower costs and achieve the Board's aims.

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 Dentistry concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to a periodic review, the Board of Dentistry proposes to repeal its regulatory chapter governing all dental practices (18VAC60-20) and replace it with four regulatory chapters: Regulations Governing the Disciplinary Process (18VAC60-15), Regulations Governing the Practice of Dentistry (18VAC60-21), Regulations Governing the Practice of Dental Hygiene (18VAC60-25), and Regulations Governing the Practice of Dental Assistants II (18VAC60-30). All changes in these replacement regulations are clarifying in nature except for the requirements for the administration of conscious/moderate sedation, deep sedation, and general anesthesia in dental practices and for the permitting of dentists who administer conscious/moderate sedation, deep sedation, and general anesthesia, which are currently effective as an emergency regulation.

CHAPTER 15
REGULATIONS GOVERNING THE DISCIPLINARY PROCESS

18VAC60-15-10. Recovery of disciplinary costs.

A. Assessment of cost for investigation of a disciplinary case.

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant, the board may assess the hourly costs relating to investigation of the case by the Enforcement Division of the Department of Health Professions and, if applicable, the costs for hiring an expert witness and reports generated by such witness.

2. The imposition of recovery costs relating to an investigation shall be included in the order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of investigative costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average hourly cost for enforcement that is chargeable to investigation of complaints filed against its regulants and shall state those costs in a guidance document to be used in imposition of recovery costs. The average hourly cost multiplied times the number of hours spent in investigating the specific case of a respondent shall be used in the imposition of recovery costs.

B. Assessment of cost for monitoring a licensee or registrant.

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant and in which terms and conditions have been imposed, the costs for monitoring of a licensee or registrant may be charged and shall be calculated based on the specific terms and conditions and the length of time the licensee or registrant is to be monitored.

2. The imposition of recovery costs relating to monitoring for compliance shall be included in the board order from an informal or formal proceeding or part of a consent order agreed to by the parties. The schedule for payment of monitoring costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average costs for monitoring of certain terms and conditions, such as acquisition of continuing education, and shall set forth those costs in a guidance document to be used in the imposition of recovery costs.

C. Total of assessment. In accordance with § 54.1-2708.2 of the Code of Virginia, the total of recovery costs for investigating and monitoring a licensee or registrant shall not exceed $5,000, but shall not include the fee for inspection of dental offices and returned checks as set forth in 18VAC60-21-40 or collection costs incurred for delinquent fines and fees.

18VAC60-15-20. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 of the Code, the board may delegate an informal fact-finding proceeding to an agency subordinate at the time a determination is made that probable cause exists that a practitioner may be subject to a disciplinary action. If delegation to a subordinate is not recommended at the time of the probable cause determination, delegation may be approved by the president of the board or his designee.

B. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

CHAPTER 21
REGULATIONS GOVERNING THE PRACTICE OF DENTISTRY

Part I
General Provisions

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

"Maxillofacial"

"Oral and maxillofacial surgeon"

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

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Conscious/moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, or sublingual).

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced

depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a minimally depressed level of consciousness, produced by a pharmacological method, which retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Moderate sedation" (see the definition of conscious/moderate sedation).

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

"Topical oral anesthestic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-21-20. Address of record.

Each licensed dentist shall provide the board with a current address of record. All required notices and correspondence mailed by the board to any such licensee shall be validly given when mailed to the address of record on file with the board. Each licensee may also provide a different address to be used as the public address, but if a second address is not provided, the address of record shall be the public address. All changes of address shall be furnished to the board in writing within 30 days of such changes.

18VAC60-21-30. Posting requirements.

A. A dentist who is practicing under a firm name or who is practicing as an employee of another dentist is required by § 54.1-2720 of the Code to conspicuously display his name at the entrance of the office. The employing dentist, firm, or company must enable compliance by designating a space at the entrance of the office for the name to be displayed.

B. In accordance with § 54.1-2721 of the Code a dentist shall display a license where it is conspicuous and readable by patients in each dental practice setting. If a licensee practices in more than one office, a duplicate license obtained from the board may be displayed.

C. A dentist who administers, prescribes, or dispenses Schedules II through V controlled substances shall display his current registration with the federal Drug Enforcement Administration with his current active license.

D. A dentist who administers conscious/moderate sedation, deep sedation, or general anesthesia in a dental office shall display his sedation or anesthesia permit issued by the board.

18VAC60-21-40. Required fees.

A. Application/registration fees.

1. Dental license by examination	$400
2. Dental license by credentials	$500
3. Dental restricted teaching license	$285
4. Dental teacher's license	$285
5. Dental full-time faculty license	$285
6. Dental temporary resident's license	$60
7. Restricted volunteer license	$25

8. Volunteer exemption registration	$10
9. Oral maxillofacial surgeon registration	$175
10. Cosmetic procedures certification	$225
11. Mobile clinic/portable operation	$250
12. Conscious/moderate sedation permit	$100
13. Deep sedation/general anesthesia permit	$100
B. Renewal fees.	
1. Dental license - active	$285
2. Dental license - inactive	$145
3. Dental temporary resident's license	$35
4. Restricted volunteer license	$15
5. Oral maxillofacial surgeon registration	$175
6. Cosmetic procedures certification	$100
7. Conscious/moderate sedation permit	$100
8. Deep sedation/general anesthesia permit	$100
C. Late fees.	
1. Dental license - active	$100
2. Dental license - inactive	$50
3. Dental temporary resident's license	$15
4. Oral maxillofacial surgeon registration	$55
5. Cosmetic procedures certification	$35
6. Conscious/moderate sedation permit	$35
7. Deep sedation/general anesthesia permit	$35
D. Reinstatement fees.	
1. Dental license - expired	$500
2. Dental license - suspended	$750
3. Dental license - revoked	$1000
4. Oral maxillofacial surgeon registration	$350
5. Cosmetic procedures certification	$225
E. Document fees.	
1. Duplicate wall certificate	$60
2. Duplicate license	$20
3. License certification	$35
F. Other fees.	
1. Returned check fee	$35
2. Practice inspection fee	$350

G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

Part II
Standards of Practice

18VAC60-21-50. Scope of practice.

A. A dentist shall only treat based on a bona fide dentist-patient relationship for medicinal or therapeutic purposes within the course of his professional practice consistent with the definition of dentistry in § 54.1-2710 of the Code, the provisions for controlled substances in the Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code), and the general provisions for health practitioners in the Code. A bona fide dentist-patient relationship is established when examination and diagnosis of a patient is initiated.

B. For the purpose of prescribing controlled substances, the bona fide dentist-patient relationship shall be established in accordance with § 54.1-3303 of the Code.

18VAC60-21-60. General responsibilities to patients.

A. A dentist is responsible for conducting his practice in a manner that safeguards the safety, health, and welfare of his patients and the public by:

1. Maintaining a safe and sanitary practice, including containing or isolating pets away from the treatment areas of the dental practice. An exception shall be made for a service dog trained to accompany its owner or handler for the purpose of carrying items, retrieving objects, pulling a wheelchair, alerting the owner or handler to medical conditions, or other such activities of service or support necessary to mitigate a disability.

2. Consulting with or referring patients to other practitioners with specialized knowledge, skills, and experience when needed to safeguard and advance the health of the patient.

3. Treating according to the patient's desires only to the extent that such treatment is within the bounds of accepted treatment and only after the patient has been given a treatment recommendation and an explanation of the acceptable alternatives.

4. Only delegating patient care and exposure of dental x-rays to qualified, properly trained and supervised personnel as authorized in Part III (18VAC60-21-110 et seq.) of this chapter.

5. Giving patients at least 30 days written notice of a decision to terminate the dentist-patient relationship.

6. Knowing the signs of abuse and neglect and reporting suspected cases to the proper authorities consistent with state law.

7. Accurately representing to a patient and the public the materials or methods and techniques to be used in treatment.

B. A dentist is responsible for conducting his financial responsibilities to patients and third party payers in an ethical and honest manner by:

1. Maintaining a listing of customary fees and representing all fees being charged clearly and accurately.

2. Making a full and fair disclosure to his patient of all terms and considerations before entering into a payment agreement for services.

3. Not obtaining, attempting to obtain, or cooperating with others in obtaining payment for services by misrepresenting procedures performed, dates of service, or status of treatment.

4. Making a full and fair disclosure to his patient of any financial incentives he received for promoting or selling products.

5. Not exploiting the dentist-patient relationship for personal gain related in nondental transactions.

18VAC60-21-70. Unprofessional practice.

A. A dentist shall not commit any act that violates provisions of the Code that reasonably relate to the practice of dentistry and dental hygiene, including but not limited to:

1. Delegating any service or operation that requires the professional competence or judgment of a dentist or dental hygienist to any person who is not a licensed dentist or dental hygienist.

2. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including but not limited to current regulations promulgated by the Virginia Department of Health.

3. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program.

4. Failing to maintain and dispense scheduled drugs as authorized by the Virginia Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code) and the regulations of the Board of Pharmacy.

5. Failing to cooperate with an employee of the Department of Health Professions in the conduct of an investigation or inspection.

B. Sexual conduct with a patient, employee, or student shall constitute unprofessional conduct if:

1. The sexual conduct is unwanted or nonconsensual or

2. The sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC60-21-80. Advertising.

A. Practice limitation. A general dentist who limits his practice to a dental specialty or describes his practice by types of treatment shall state in conjunction with his name that he is a general dentist providing certain services (e.g., orthodontic services).

B. Fee disclosures. Any statement specifying a fee for a dental service that does not include the cost of all related procedures, services, and products that, to a substantial likelihood, will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts and free offers. Discount and free offers for a dental service are permissible for advertising only when the nondiscounted or full fee and the final discounted fee are also disclosed in the advertisement. In addition, the time period for obtaining the discount or free offer must be stated in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee or free offer.

D. Retention of broadcast advertising. A prerecorded copy of all advertisements on radio or television shall be retained for a 12-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services. Advertising of fees pursuant to this section is limited to procedures that are set forth in the American Dental Association's "Dental Procedures Codes," published in Current Dental Terminology in effect at the time the advertisement is issued.

F. Advertisements. Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§ 54.1-2718 and 54.1-2720 of the Code are met.

G. False, deceptive, or misleading advertisement. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of subdivision 7 of § 54.1-2706 of the Code:

1. Publishing an advertisement that contains a material misrepresentation or omission of facts that causes an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation not deceptive;

2. Publishing an advertisement that fails to include the information and disclaimers required by this section; or

3. Publishing an advertisement that contains a false claim of professional superiority, contains a claim to be a specialist, or uses any terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying

Boards for Dental Specialists, October 2009), or such guidelines or requirements as subsequently amended.

4. Representation by a dentist who does not currently hold specialty certification that his practice is limited to providing services in such specialty area without clearly disclosing that he is a general dentist.

18VAC60-21-90. Patient information and records.

A. A dentist shall maintain complete, legible, and accurate patient records for not less than six years from the last date of service for purposes of review by the board with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

B. Every patient record shall include the following:

1. Patient's name on each page in the patient record;

2. A health history taken at the initial appointment that is updated (i) when analgesia, sedation, or anesthesia is to be administered; (ii) when medically indicated; and (iii) at least annually;

3. Diagnosis and options discussed, including the risks and benefits of treatment or non-treatment and the estimated cost of treatment options;

4. Consent for treatment obtained and treatment rendered;

5. List of drugs prescribed, administered, or dispensed and the route of administration, quantity, dose, and strength;

6. Radiographs, digital images, and photographs clearly labeled with patient name and date taken;

7. Notation of each date of treatment and of the dentist, dental hygienist, and dental assistant II providing service;

8. Duplicate laboratory work orders that meet the requirements of § 54.1-2719 of the Code including the address and signature of the dentist;

9. Itemized patient financial records as required by § 54.1-2404 of the Code;

10. A notation or documentation of an order required for treatment of a patient by a dental hygienist practicing under general supervision as required in 18VAC60-21-140 B; and

11. The information required for the administration of moderate sedation, deep sedation, and general anesthesia required in 18VAC60-21-260 D.

C. A licensee shall comply with the patient record confidentiality, release, and disclosure provisions of § 32.1-127.1:03 of the Code and shall only release patient information as authorized by law.

D. Records shall not be withheld because the patient has an outstanding financial obligation.

E. A reasonable cost-based fee may be charged for copying patient records to include the cost of supplies and labor for copying documents, duplication of radiographs and images, and postage if mailing is requested as authorized by § 32.1-127.1:03 of the Code. The charges specified in § 8.01-413 of the Code are permitted when records are subpoenaed as evidence for purposes of civil litigation.

F. When closing, selling, or relocating a practice, the licensee shall meet the requirements of § 54.1-2405 of the Code for giving notice and providing records.

G. Records shall not be abandoned or otherwise left in the care of someone who is not licensed by the board except that, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a licensee, are sent to the patients of record, or are destroyed.

H. Patient confidentiality must be preserved when records are destroyed.

18VAC60-21-100. Reportable events during or following treatment or the administration of sedation or anesthesia.

The treating dentist shall submit a written report to the board within 15 calendar days following an unexpected patient event that occurred intra-operatively or during the first 24 hours immediately following the patient's departure from his facility, resulting in either a physical injury or a respiratory, cardiovascular, or neurological complication that necessitated admission of the patient to a hospital or in a patient death.

Part III
Direction and Delegation of Duties

18VAC60-21-110. Utilization of dental hygienists and dental assistants II.

A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services additional dental hygienists to practice under general supervision in a free clinic or a public health program, or on a voluntary basis.

18VAC60-21-120. Requirements for direction and general supervision.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter and the Code.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or

governmental agency or when volunteering services as provided in 18VAC60-21-110.

C. Dental hygienists acting within the scope of a license issued to them by the board under § 54.1-2722 or 54.1-2725 of the Code who teach dental hygiene in a CODA accredited program are exempt from this section.

D. Duties delegated to a dental hygienist under indirect supervision shall only be performed when the dentist is present in the facility and examines the patient during the time services are being provided.

E. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed 10 months from the date the dentist last performed a periodic examination of the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment under general supervision.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that a dentist may not be present, that only topical oral anesthetics can be administered to manage pain, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

F. An order for treatment under general supervision shall not preclude the use of another level of supervision when, in the professional judgment of the dentist, such level of supervision is necessary to meet the individual needs of the patient.

18VAC60-21-130. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-25-100, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administering and monitoring conscious/moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and Part VI (18VAC60-21-260 et seq.) of this chapter;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

18VAC60-21-140. Dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and athermal lasers, with any sedation or anesthesia administered by the dentist.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

B. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with §§ 54.1-2722 D and 54.1-3408 J of the Code to be performed under general supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and athermal lasers with or without topical oral anesthetics.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in 18VAC60-21-130, those restricted to indirect supervision in subsection A of this section, and those

restricted to delegation to dental assistants II in 18VAC60-21-150.

18VAC60-21-150. Delegation to dental assistants II.

The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience, and examinations specified in 18VAC60-30-120:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations with a slow speed handpiece;

4. Taking final impressions;

5. Use of a non-epinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

18VAC60-21-160. Delegation to dental assistants I and II.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant I or II under the indirect or under general supervision required in 18VAC60-21-120, with the exception of those listed as nondelegable in 18VAC60-21-130, those which may only be delegated to dental hygienists as listed in 18VAC60-21-140, and those which may only be delegated to a dental assistant II as listed in 18VAC60-21-150.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant, and being available for consultation on patient care.

18VAC60-21-170. Radiation certification.

No dentist or dental hygienist shall permit a person not otherwise licensed by this board to place or expose dental x-ray film unless he has one of the following: (i) satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene, or dentistry accredited by CODA; (ii) certification by the American Registry of Radiologic Technologists; or (iii) satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety Exam given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-21-180. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. General oral health education.

2. Recording a patient's pulse, blood pressure, temperature, presenting complaint, and medical history.

3. Conducting preliminary dental screenings in free clinics, public health programs, or a voluntary practice.

Part IV
Entry, Licensure, and Registration Requirements

18VAC60-21-190. General application provisions.

A. Applications for any dental license, registration, or permit issued by the board, other than for a volunteer exemption or for a restricted volunteer license, shall include:

1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or certificate, or post-doctoral degree or certificate;

2. An original grade card documenting passage of all parts of the Joint Commission on National Dental Examinations; and

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB).

B. All applicants for licensure, other than for a volunteer exemption or for a restricted volunteer license, shall be required to attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry, dental hygiene, and dental assisting in Virginia.

C. If a transcript or other documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure.

D. Any application for a dental license, registration, or permit may be denied for any cause specified in § 54.1-111 or 54.1-2706 of the Code.

E. An application must include payment of the appropriate fee as specified in 18VAC60-21-40.

18VAC60-21-200. Education.

An applicant for any type of dental licensure shall be a graduate of and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental program of at least 24 months in any other specialty that includes a clinical component.

18VAC60-21-210. Qualifications for an unrestricted license.

A. Dental licensure by examination.

1. All applicants for licensure by examination shall have:

a. Successfully completed all parts of the National Board Dental Examination given by the Joint Commission on National Dental Examinations; and

b. Passed a dental clinical competency examination that is accepted by the board.

2. If a candidate has failed any section of a clinical competency examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

3. Applicants who successfully completed a clinical competency examination five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake an examination or take continuing education that meets the requirements of 18VAC60-21-250 unless they demonstrate that they have maintained clinical, ethical, and legal practice in another jurisdiction of the United States or in federal civil or military service for 48 of the past 60 months immediately prior to submission of an application for licensure.

B. Dental licensure by credentials. All applicants for licensure by credentials shall:

1. Have passed all parts of the National Board Dental Examination given by the Joint Commission on National Dental Examinations;

2. Have successfully completed a clinical competency examination acceptable to the board;

3. Hold a current, unrestricted license to practice dentistry in another jurisdiction of the United States and be certified to be in good standing by each jurisdiction in which a license is currently held or has been held; and

4. Have been in continuous clinical practice in another jurisdiction of the United States or in federal civil or military service for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in another jurisdiction of the United States (i) as a volunteer in a public health clinic, (ii) as an intern, or (iii) in a residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.

18VAC60-21-220. Inactive license.

A. Any dentist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. With the exception of practice with a current restricted volunteer license as provided in § 54.1-2712.1 of the Code, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry in Virginia.

B. An inactive license may be reactivated upon submission of the required application, which includes evidence of continuing competence and payment of the current renewal fee. To evaluate continuing competence the board shall consider (i) hours of continuing education that meet the requirements of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination that is accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

1. Continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours, must be included with the application. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation.

2. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code or who is unable to demonstrate continuing competence.

18VAC60-21-230. Qualifications for a restricted license.

A. Temporary permit for public health settings. A temporary permit shall be issued only for the purpose of allowing dental practice in a dental clinic operated by a state agency or a Virginia charitable organization as limited by § 54.1-2715 of the Code.

1. Passage of a clinical competency examination is not required, but the applicant cannot have failed a clinical competency examination accepted by the board.

2. A temporary permit will not be renewed unless the holder shows that extraordinary circumstances prevented the holder from taking the licensure examination during the term of the temporary permit.

B. Teacher's license. A teacher's license shall be issued to any dentist certified to be on the faculty of an accredited dental program who meets the entry requirements of § 54.1-2713 of the Code.

1. Passage of a clinical competency examination is not required, but the applicant cannot have failed a clinical competency examination accepted by the board.

2. The holder of a teacher's license shall not practice intramurally or privately and shall not receive fees for service.

3. A teacher's license shall remain valid only while the holder is serving on the faculty of an accredited dental program in the Commonwealth. When any such license holder ceases to continue serving on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, and the license shall be null and void upon termination of full-time employment.

4. The dean of the dental school shall notify the board within five working days of such termination of employment.

C. Full-time faculty license. A faculty license shall be issued for the purpose of allowing dental practice as a full-time faculty member of an accredited dental program when the applicant meets the entry requirements of § 54.1-2713 of the Code.

1. Passage of a clinical competency examination is not required, but the applicant cannot have failed a clinical competency examination accepted by the board.

2. The holder of a faculty license may practice intramurally and may receive fees for service but cannot practice privately.

3. A faculty license shall remain valid only while the holder is serving full time on the faculty of an accredited dental program in the Commonwealth. When any such license holder ceases to continue serving full time on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment.

4. The dean of the dental school shall notify the board within five working days of such termination of full-time employment.

D. Temporary licenses to persons enrolled in advanced dental education programs. A dental intern, resident, or post-doctoral certificate or degree candidate shall obtain a temporary license to practice in Virginia.

1. The applicant shall have successfully completed a D.D.S. or D.M.D. degree program required for admission to a clinical competency examination accepted by the board. Submission of a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received is required.

2. The applicant shall submit a recommendation from the dean of the dental school or the director of the accredited advanced dental education program specifying the applicant's acceptance as an intern, resident, or post-doctoral certificate or degree candidate. The beginning and ending dates of the internship, residency, or post-doctoral program shall be specified.

3. The temporary license permits the holder to practice only in the hospital or outpatient clinics that are recognized parts of an advanced dental education program.

4. The temporary license may be renewed annually by June 30, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited advanced dental education program.

5. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency, or post-doctoral program is taken. The holder is prohibited from practicing outside of the advanced dental education program.

6. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.

E. Restricted volunteer license.

1. In accordance with § 54.1-2712.1 of the Code, the board may issue a restricted volunteer license to a dentist who:

a. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;

b. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

c. Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

d. Has not failed a clinical examination within the past five years; and

e. Has had at least five years of clinical practice.

2. A person holding a restricted volunteer license under this section shall:

a. Only practice in public health or community free clinics that provide dental services to underserved populations;

b. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

c. Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and

d. Not be required to complete continuing education in order to renew such a license.

3. The restricted volunteer license shall specify whether supervision is required, and if not, the date by which it will be required. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days. If supervision is required, the supervising dentist shall directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision shall be noted in patient charts and maintained in accordance with 18VAC60-21-90.

4. A restricted volunteer license granted pursuant to this section shall expire on June 30 of the second year after its issuance or shall terminate when the supervising dentist withdraws his sponsorship.

5. A dentist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

F. Registration for voluntary practice by out-of-state licensees. Any dentist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

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

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

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

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

Part V
Licensure Renewal

18VAC60-21-240. License renewal and reinstatement.

A. The license or permit of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid, and his practice of dentistry shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2712.1 of the Code practicing in Virginia with an expired license or permit may subject the licensee to disciplinary action by the board.

B. Every person holding an active or inactive license; a permit to administer conscious/moderate sedation, deep sedation, or general anesthesia; or a full-time faculty license shall annually, on or before March 31, renew his license or permit. Every person holding a teacher's license, temporary resident's license, a restricted volunteer license, or a temporary permit shall, on or before June 30, request renewal of his license.

C. Any person who does not return the completed form and fee by the deadline required in subsection B of this section shall be required to pay an additional late fee.

D. The board shall renew a license or permit if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection B of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

E. Reinstatement procedures.

1. Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.

2. To evaluate continuing competence, the board shall consider (i) hours of continuing education that meet the requirements of subsection G of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

3. The executive director may reinstate such expired license or permit provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

18VAC60-21-250. Requirements for continuing education.

A. A dentist shall complete a minimum of 15 hours of continuing education, which meets the requirements for content, sponsorship, and documentation set out in this section, for each annual renewal of licensure except for the first renewal following initial licensure and for any renewal of a restricted volunteer license.

1. All renewal applicants shall attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry and dental hygiene in Virginia. Continuing education credit may be earned for passage of the online Virginia Dental Law Exam.

2. A dentist shall maintain current training certification in basic cardiopulmonary resuscitation or basic life support unless he is required by 18VAC60-21-290 or 18VAC60-21-300 to hold current certification in advanced life support with hands-on simulated airway and megacode training for health care providers.

3. A dentist who administers or monitors patients under general anesthesia, deep sedation, or conscious/moderate sedation shall complete four hours every two years of approved continuing education directly related to administration and monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

4. 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. To be accepted for license renewal, continuing education programs shall be directly relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; 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, and stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, business management, marketing, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subsection B of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association, their constituent and component/branch associations, and approved providers;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association, and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry, its constituent and component/branch associations, and approved providers;

7. 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 Healthcare Organizations;

8. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

9. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education;

10. A dental, dental hygiene, or dental assisting program or advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board; or

15. 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. 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. A written request with supporting documents must be submitted prior to renewal of the license.

E. A licensee is required to verify compliance with the continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees 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.

F. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the sponsor, and the amount of time earned. Documentation must be maintained for a period of four years following renewal.

G. 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.

H. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

I. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

Part VI
Controlled Substances, Sedation, and Anesthesia

18VAC60-21-260. General provisions.

A. Application of Part VI. This part applies to prescribing, dispensing, and administering controlled substances in dental offices, mobile dental facilities, and portable dental operations and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code, (ii) a state-operated hospital, or (iii) a facility directly maintained or operated by the federal government.

B. Registration required. Any dentist who prescribes, administers, or dispenses Schedules II through V controlled drugs must hold a current registration with the federal Drug Enforcement Administration.

C. Patient evaluation required.

1. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the

health history and current medical condition of the patient in accordance with the Class I through V risk category classifications of the American Society of Anesthesiologists (ASA) in effect at the time of treatment. The findings of the evaluation, the ASA risk assessment class assigned, and any special considerations must be recorded in the patient's record.

2. Any level of sedation and general anesthesia may be provided for a patient who is ASA Class I and Class II.

3. A patient in ASA Class III shall only be provided minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary;

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary; or

c. A person licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code who has a specialty in anesthesia.

4. Minimal sedation may only be provided for a patient who is in ASA Class IV by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

5. Conscious/moderate sedation, deep sedation, or general anesthesia shall not be provided in a dental office for patients in ASA Class IV and Class V.

D. Additional requirements for patient information and records. In addition to the record requirements in 18VAC60-21-90, when conscious/moderate sedation, deep sedation, or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;

2. Review of medical history and current conditions;

3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;

4. Pre-operative vital signs;

5. A record of the name, dose, and strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;

6. Monitoring records of all required vital signs and physiological measures recorded every five minutes; and

7. A list of staff participating in the administration, treatment, and monitoring including name, position, and assigned duties.

E. Pediatric patients. No sedating medication shall be prescribed for or administered to a child 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

F. Informed written consent. Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type, strength, and dosage of medication, the method of administration, and the individual characteristics of the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely, factoring in titration and the patient's age, weight, and ability to metabolize drugs.

H. Emergency management. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

I. Ancillary personnel. Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for health care providers, such as Basic Cardiac Life Support for Health Professionals or an approved, clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18VAC60-21-250 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. A dentist, consistent with the planned level of administration (i.e., local anesthesia, minimal sedation, conscious/moderate sedation, deep sedation, or general anesthesia) and appropriate to his education, training, and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant, or nurse to perform functions appropriate to such practitioner's education, training, and experience and consistent with that practitioner's respective scope of practice.

K. Patient monitoring.

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant, or nurse who is under his direction or to another dentist, anesthesiologist, or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory, and recovery area (i) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent, (ii) throughout the administration of drugs, (iii) throughout the treatment of the patient, and (iv) throughout recovery until the patient is discharged by the dentist.

2. The person monitoring the patient shall:

a. Have the patient's entire body in sight;

b. Be in close proximity so as to speak with the patient;

c. Converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation;

d. Closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement, and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist; and

e. Read, report, and record the patient's vital signs and physiological measures.

18VAC60-21-270. Administration of local anesthesia.

A dentist may administer or use the services of the following personnel to administer local anesthesia:

1. A dentist;

2. An anesthesiologist;

3. A certified registered nurse anesthetist under his medical direction and indirect supervision;

4. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older under his indirect supervision;

5. A dental hygienist to administer Schedule VI topical oral anesthetics under indirect supervision or under his order for such treatment under general supervision; or

6. A dental assistant or a registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under indirect supervision.

18VAC60-21-280. Administration of minimal sedation.

A. Education and training requirements. A dentist who utilizes minimal sedation shall have training in and knowledge of:

1. Medications used, the appropriate dosages, the potential complications of administration, the indicators for complications, and the interventions to address the complications.

2. Physiological effects of nitrous oxide, potential complications of administration, the indicators for complications, and the interventions to address the complications.

3. The use and maintenance of the equipment required in subsection D of this section.

B. No sedating medication shall be prescribed for or administered to a child 12 years of age or younger prior to his arrival at the dental office or treatment facility.

C. Delegation of administration.

1. A qualified dentist may administer or use the services of the following personnel to administer minimal sedation:

a. A dentist;

b. An anesthesiologist;

c. A certified registered nurse anesthetist under his medical direction and indirect supervision;

d. A dental hygienist with the training required by 18VAC60-25-90 B or C only for administration of nitrous oxide/oxygen and under indirect supervision; or

e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of minimal sedation, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-90 C to administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics;

3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office or treatment facility, the dentist may only use the personnel listed in subdivision 1 of this subsection to administer local anesthesia.

D. Equipment requirements. A dentist who utilizes minimal sedation or who directs the administration by another licensed health professional as permitted in subsection C of this section shall maintain the following equipment in working

order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment;

2. Source of delivery of oxygen under controlled positive pressure;

3. Mechanical (hand) respiratory bag;

4. Suction apparatus; and

5. Pulse oximeter.

E. Required staffing.

1. The treatment team for minimal sedation other than just inhalation of nitrous oxide/oxygen shall consist of the dentist and a second person in the operatory with the patient to assist the dentist and monitor the patient. The second person shall be a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I; or

2. When only nitrous oxide/oxygen is administered for minimal sedation, a second person is not required. Either the dentist or qualified dental hygienist under the indirect supervision of a dentist may administer the nitrous oxide/oxygen and treat and monitor the patient.

F. Monitoring requirements.

1. Baseline vital signs to include blood pressure, respiratory rate, and heart rate shall be taken and recorded prior to administration of sedation and prior to discharge.

2. Blood pressure, oxygen saturation, respiratory rate, pulse, and heart rate shall be monitored intraoperatively.

3. Once the administration of minimal sedation has begun by any route of administration, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.

4. If nitrous oxide/oxygen is used, monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off.

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure, respiratory rate, and heart rate shall be taken and recorded prior to discharge.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

18VAC60-21-290. Requirements for a conscious/moderate sedation permit.

A. After March 31, 2013, no dentist may employ or use conscious/moderate sedation in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. Automatic qualification. Dentists who hold a current permit to administer deep sedation and general anesthesia may administer conscious/moderate sedation.

C. To determine eligibility for a conscious/moderate sedation permit, a dentist shall submit the following:

1. A completed application form indicating one of the following permits for which the applicant is qualified:

a. Conscious/moderate sedation by any method;

b. Conscious/moderate sedation by enteral administration only; or

c. Temporary conscious/moderate sedation permit (may be renewed one time);

2. The application fee as specified in 18VAC60-21-40;

3. A copy of a transcript, certification, or other documentation of training content that meets the educational and training qualifications as specified in subsection D of this section, as applicable; and

4. A copy of current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) as required in subsection E of this section.

D. Education requirements for a permit to administer conscious/moderate sedation.

1. Administration by any method. A dentist may be issued a conscious/moderate sedation permit to administer by any method by meeting one of the following criteria:

a. Completion of training for this treatment modality according to the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred, while enrolled in an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

b. Completion of a continuing education course that meets the requirements of 18VAC60-21-250 and consists of (i) 60 hours of didactic instruction plus the management of at least 20 patients per participant, (ii) demonstration of competency and clinical experience in conscious/moderate sedation, and (iii) management of a

compromised airway. The course content shall be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred.

2. Enteral administration only. A dentist may be issued a conscious/moderate sedation permit to administer only by an enteral method if he has completed a continuing education program that meets the requirements of 18VAC60-21-250 and consists of not less than 18 hours of didactic instruction plus 20 clinically-oriented experiences in enteral or a combination of enteral and nitrous oxide/oxygen conscious/moderate sedation techniques. The course content shall be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred. The certificate of completion and a detailed description of the course content must be maintained.

3. A dentist who self-certified his qualifications in anesthesia and moderate sedation prior to January 1989 may continue to administer only conscious/moderate sedation until September 14, 2012. After September 14, 2012, a dentist shall meet the requirements for and obtain a conscious/moderate sedation permit to administer by any method or by enteral administration only.

E. Additional training required. Dentists who administer conscious/moderate sedation shall:

1. Hold current certification in advanced resuscitation techniques with hands-on simulated airway and megacode training for health care providers, such as ACLS or PALS as evidenced by a certificate of completion posted with the dental license; and

2. Have current training in the use and maintenance of the equipment required in 18VAC60-21-291.

18VAC60-21-291. Requirements for administration of conscious/moderation sedation.

A. Delegation of administration.

1. A dentist not qualified to administer conscious/moderate sedation shall only use the services of a qualified dentist or an anesthesiologist to administer such sedation in a dental office. In a licensed outpatient surgery center, a dentist not qualified to administer conscious/moderate sedation shall use either a qualified dentist, an anesthesiologist, or a certified registered nurse anesthetist to administer such sedation.

2. A qualified dentist may administer or use the services of the following personnel to administer conscious/moderate sedation:

a. A dentist with the training required by 18VAC60-21-290 D 2 to administer by an enteral method;

b. A dentist with the training required by 18VAC60-21-290 D 1 to administer by any method;

c. An anesthesiologist;

d. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-290 D 1; or

e. A registered nurse upon his direct instruction and under the immediate supervision of a dentist who meets the training requirements of 18VAC60-21-290 D 1.

3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office, the dentist may only use the personnel listed in subdivision 2 of this subsection to administer local anesthesia. No sedating medication shall be prescribed for or administered to a child 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

4. Preceding the administration of conscious/moderate sedation, a qualified dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to numb the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

B. Equipment requirements. A dentist who administers conscious/moderate sedation shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;

5. Pulse oximetry;

6. Blood pressure monitoring equipment;

7. Pharmacologic antagonist agents;

8. Source of delivery of oxygen under controlled positive pressure;

9. Mechanical (hand) respiratory bag;

10. Appropriate emergency drugs for patient resuscitation;

11. Electrocardiographic monitor;

12. Defibrillator;

13. Suction apparatus;

14. Temperature measuring device;

15. Throat pack; and

16. Precordial or pretracheal stethoscope.

C. Required staffing. At a minimum, there shall be a two person treatment team for conscious/moderate sedation. The team shall include the operating dentist and a second person to monitor the patient as provided in 18VAC60-21-260 K and assist the operating dentist as provided in 18VAC60-21-260 J, both of whom shall be in the operatory with the patient throughout the dental procedure. If the second person is a dentist, an anesthesiologist, or a certified registered nurse anesthetist who administers the drugs as permitted in 18VAC60-21-291 A, such person may monitor the patient.

D. Monitoring requirements.

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.

2. Blood pressure, oxygen saturation, pulse, and heart rate shall be monitored continually during the administration and recorded every five minutes.

3. Monitoring of the patient under conscious/moderate sedation is to begin prior to administration of sedation or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental facility and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

E. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory for discharge and vital signs have been taken and recorded.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

F. Emergency management. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

18VAC60-21-300. Requirements for a deep sedation/general anesthesia permit.

A. After March 31, 2013, no dentist may employ or use deep sedation or general anesthesia in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. To determine eligibility for a deep sedation/general anesthesia permit, a dentist shall submit the following:

1. A completed application form;

2. The application fee as specified in 18VAC60-21-40;

3. A copy of the certificate of completion of a CODA accredited program or other documentation of training content which meets the educational and training qualifications specified in subsection C of this section; and

4. A copy of current certification in ACLS or PALS as required in subsection C of this section.

C. Educational and training qualifications for a deep sedation/general anesthesia permit.

1. Completion of a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred; or

2. Completion of an CODA accredited residency in any dental specialty that incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e., medical evaluation and management of patients) comparable to those set forth in the ADA's Guidelines for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred; and

3. Current certification in advanced resuscitative techniques with hands-on simulated airway and megacode training for health care providers, such as courses in ACLS or PALS; and

4. Current training in the use and maintenance of the equipment required in 18VAC60-21-301.

18VAC60-21-301. Requirements for administration of deep sedation or general anesthesia.

A. Preoperative requirements. Prior to the appointment for treatment under deep sedation or general anesthesia the patient shall:

1. Be informed about the personnel and procedures used to deliver the sedative or anesthetic drugs to assure informed consent as required by 18VAC60-21-260 F.

2. Have a physical evaluation as required by 18VAC60-21-260 C.

3. Be given pre-operative verbal and written instructions including any dietary or medication restrictions.

B. Delegation of administration.

1. A dentist not qualified to administer deep sedation or general anesthesia shall only use the services of a qualified dentist or an anesthesiologist to administer deep sedation or general anesthesia in a dental office. In a licensed outpatient surgery center, a dentist not qualified to administer deep sedation or general anesthesia shall use either a qualified dentist, an anesthesiologist, or a certified registered nurse anesthetist to administer deep sedation or general anesthesia.

2. A qualified dentist may administer or use the services of the following personnel to administer deep sedation or general anesthesia:

a. A dentist with the training required by 18VAC60-21-300 C;

b. An anesthesiologist; or

c. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-300 C.

3. Preceding the administration of deep sedation or general anesthesia, a qualified dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to numb the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

C. Equipment requirements. A dentist who administers deep sedation or general anesthesia shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;

5. Source of delivery of oxygen under controlled positive pressure;

6. Mechanical (hand) respiratory bag;

7. Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;

8. Appropriate emergency drugs for patient resuscitation;

9. EKG monitoring equipment;

10. Temperature measuring devices;

11. Pharmacologic antagonist agents;

12. External defibrillator (manual or automatic);

13. For intubated patients, an End-Tidal CO^2 monitor;

14. Suction apparatus;

15. Throat pack; and

16. Precordial or pretracheal stethoscope.

D. Required staffing. At a minimum, there shall be a three-person treatment team for deep sedation or general anesthesia. The team shall include the operating dentist, a second person to monitor the patient as provided in 18VAC60-21-260 K, and a third person to assist the operating dentist as provided in 18VAC60-21-260 J, all of whom shall be in the operatory with the patient during the dental procedure. If a second dentist, an anesthesiologist, or a certified registered nurse anesthetist administers the drugs as permitted in 18VAC60-21-301 B, such person may serve as the second person to monitor the patient.

E. Monitoring requirements.

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility to include: temperature, blood pressure, pulse, pulse oximeter, oxygen saturation, respiration, and heart rate.

2. The patient's vital signs shall be monitored, recorded every five minutes, and reported to the treating dentist throughout the administration of controlled drugs and recovery. When depolarizing medications are administered, temperature shall be monitored constantly.

3. Monitoring of the patient under deep sedation or general anesthesia is to begin prior to the administration of any drugs and shall take place continuously during administration, the dental procedure, and recovery from anesthesia. The person who administers the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

F. Emergency management.

1. A secured intravenous line must be established and maintained throughout the procedure.

2. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

G. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and circulation are

satisfactory for discharge and vital signs have been taken and recorded.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24 hour emergency telephone number.

3. Patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

Part VII
Oral and Maxillofacial Surgeons

18VAC60-21-310. Registration of oral and maxillofacial surgeons.

Every licensed dentist who practices as an oral and maxillofacial surgeon, as defined in § 54.1-2700 of the Code, shall register his practice with the board.

1. After initial registration, an oral and maxillofacial surgeon shall renew his registration annually on or before December 31.

2. An oral and maxillofacial surgeon who fails to register or to renew his registration and continues to practice oral and maxillofacial surgery may be subject to disciplinary action by the board.

3. Within one year of the expiration of a registration, an oral and maxillofacial surgeon may renew by payment of the renewal fee and a late fee.

4. After one year from the expiration date, an oral and maxillofacial surgeon who wishes to reinstate his registration shall update his profile and pay the reinstatement fee.

18VAC60-21-320. Profile of information for oral and maxillofacial surgeons.

A. In compliance with requirements of § 54.1-2709.2 of the Code, an oral and maxillofacial surgeon registered with the board shall provide, upon initial request, the following information within 30 days:

1. The address of the primary practice setting and all secondary practice settings with the percentage of time spent at each location;

2. Names of dental or medical schools with dates of graduation;

3. Names of graduate medical or dental education programs attended at an institution approved by the Accreditation Council for Graduate Medical Education, the Commission on Dental Accreditation, and the American Dental Association with dates of completion of training;

4. Names and dates of specialty board certification or board eligibility, if any, as recognized by the Council on Dental Education and Licensure of the American Dental Association;

5. Number of years in active, clinical practice in the United States or Canada, following completion of medical or dental training and the number of years, if any, in active, clinical practice outside the United States or Canada;

6. Names of insurance plans accepted or managed care plans in which the oral and maxillofacial surgeon participates and whether he is accepting new patients under such plans;

7. Names of hospitals with which the oral and maxillofacial surgeon is affiliated;

8. Appointments within the past 10 years to dental school faculties with the years of service and academic rank;

9. Publications, not to exceed 10 in number, in peer-reviewed literature within the most recent five-year period;

10. Whether there is access to translating services for non-English speaking patients at the primary practice setting and which, if any, foreign languages are spoken in the practice; and

11. Whether the oral and maxillofacial surgeon participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients.

B. The oral and maxillofacial surgeon may provide additional information on hours of continuing education earned, subspecialities obtained, and honors or awards received.

C. Whenever there is a change in the information on record with the profile system, the oral and maxillofacial surgeon shall provide current information in any of the categories in subsection A of this section within 30 days.

18VAC60-21-330. Reporting of malpractice paid claims and disciplinary notices and orders.

A. In compliance with requirements of § 54.1-2709.4 of the Code, a dentist registered with the board as an oral and maxillofacial surgeon shall report in writing to the executive director of the board all malpractice paid claims in the most recent 10-year period. Each report of a settlement or judgment shall indicate:

1. The year the claim was paid;

2. The total amount of the paid claim in United States dollars; and

3. The city, state, and country in which the paid claim occurred.

B. The board shall use the information provided to determine the relative frequency of paid claims described in terms of the percentage who have made malpractice payments within the most recent 10-year period. The statistical methodology used will be calculated on more than 10 paid claims for all dentists reporting, with the top 16% of the paid claims to be displayed as above-average payments, the next 68% of the paid claims to be displayed as average payments, and the last 16% of the paid claims to be displayed as below-average payments.

C. Adjudicated notices and final orders or decision documents, subject to § 54.1-2400.2 G of the Code, shall be

made available on the profile. Information shall also be posted indicating the availability of unadjudicated notices and orders that have been vacated.

18VAC60-21-340. Noncompliance or falsification of profile.

A. The failure to provide the information required in subsection A of 18VAC60-20-260 may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

B. Intentionally providing false information to the board for the profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

18VAC60-21-350. Certification to perform cosmetic procedures; applicability.

A. In order for an oral and maxillofacial surgeon to perform aesthetic or cosmetic procedures, he shall be certified by the board pursuant to § 54.1-2709.1 of the Code. Such certification shall only entitle the licensee to perform procedures above the clavicle or within the head and neck region of the body.

B. Based on the applicant's education, training, and experience, certification may be granted to perform the following procedures for cosmetic treatment:

1. Rhinoplasty and other treatment of the nose;

2. Blepharoplasty and other treatment of the eyelid;

3. Rhytidectomy and other treatment of facial skin wrinkles and sagging;

4. Submental liposuction and other procedures to remove fat;

5. Laser resurfacing or dermabrasion and other procedures to remove facial skin irregularities;

6. Browlift (either open or endoscopic technique) and other procedures to remove furrows and sagging skin on the upper eyelid or forehead;

7. Platysmal muscle plication and other procedures to correct the angle between the chin and neck;

8. Otoplasty and other procedures to change the appearance of the ear; and

9. Application of injectable medication or material for the purpose of treating extra-oral cosmetic conditions.

18VAC60-21-360. Certification not required.

Certification shall not be required for performance of the following:

1. Treatment of facial diseases and injuries, including maxillofacial structures;

2. Facial fractures, deformity, and wound treatment;

3. Repair of cleft lip and palate deformity;

4. Facial augmentation procedures; and

5. Genioplasty.

18VAC60-21-370. Credentials required for certification.

An applicant for certification shall:

1. Hold an active, unrestricted license from the board;

2. Submit a completed application and fee;

3. Complete an oral and maxillofacial residency program accredited by the Commission on Dental Accreditation;

4. Hold board certification by the American Board of Oral and Maxillofacial Surgery (ABOMS) or board eligibility as defined by ABOMS;

5. Have current privileges on a hospital staff to perform oral and maxillofacial surgery; and

6. If his oral and maxillofacial residency or cosmetic clinical fellowship was completed after July 1, 1996, and training in cosmetic surgery was a part of such residency or fellowship, submit:

a. A letter from the director of the residency or fellowship program documenting the training received in the residency or in the clinical fellowship to substantiate adequate training in the specific procedures for which the applicant is seeking certification; and

b. Documentation of having performed as primary or assistant surgeon at least 10 proctored cases in each of the procedures for which he seeks to be certified.

7. If his oral and maxillofacial residency was completed prior to July 1, 1996, or if his oral and maxillofacial residency was completed after July 1, 1996, and training in cosmetic surgery was not a part of the applicant's residency, submit:

a. Documentation of having completed didactic and clinically approved courses to include the dates attended, the location of the course, and a copy of the certificate of attendance. Courses shall provide sufficient training in the specific procedures requested for certification and shall be offered by:

(1) An advanced specialty education program in oral and maxillofacial surgery accredited by the Commission on Dental Accreditation;

(2) A medical school accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association;

(3) The American Dental Association or one of its constituent and component societies or other ADA Continuing Education Recognized Programs (CERP) approved for continuing dental education; or

(4) The American Medical Association approved for category 1, continuing medical education.

b. Documentation of either:

(1) Holding current privileges to perform cosmetic surgical procedures within a hospital accredited by the

Joint Commission on Accreditation of Healthcare Organizations; or

(2) Having completed at least 10 cases as primary or secondary surgeon in the specific procedures for which the applicant is seeking certification, of which at least five shall be proctored cases as defined in this chapter.

18VAC60-21-380. Renewal of certification.

In order to renew his certification to perform cosmetic procedures, an oral and maxillofacial surgeon shall possess a current, active, unrestricted license to practice dentistry from the Virginia Board of Dentistry and shall submit the renewal application and fee on or before December 31 of each year. If an oral and maxillofacial surgeon fails to renew his certificate, the certificate is lapsed and performance of cosmetic procedures is not permitted. To renew a lapsed certificate within one year of expiration, the oral and maxillofacial surgeon shall pay the renewal fees and a late fee. Reinstatement of a certification that has been lapsed for more than one year shall require completion of a reinstatement form documenting continued competency in the procedures for which the surgeon is certified and payment of a reinstatement fee.

18VAC60-21-390. Quality assurance review for procedures peformed by certificate holders.

A. On a schedule of no less than once every three years, the board shall conduct a random audit of charts for patients receiving cosmetic procedures that are performed by a certificate holder in a facility not accredited by Joint Commission on Accreditation of Healthcare Organizations or other nationally recognized certifying organization as determined by the board.

B. Oral and maxillofacial surgeons certified to perform cosmetic procedures shall maintain separate files, an index, coding, or other system by which such charts can be identified by cosmetic procedure.

C. Cases selected in a random audit shall be reviewed for quality assurance by a person qualified to perform cosmetic procedures according to a methodology determined by the board.

18VAC60-21-400. Complaints against certificate holders for cosmetic procedures.

Complaints arising out of performance of cosmetic procedures by a certified oral and maxillofacial surgeon shall be adjudicated solely by the Board of Dentistry. Upon receipt of the investigation report on such complaints, the Board of Dentistry shall promptly notify the Board of Medicine, and the investigation report shall be reviewed and an opinion rendered by both a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry. The Board of Medicine shall maintain the confidentiality of the complaint consistent with § 54.1-2400.2 of the Code.

18VAC60-21-410. Registration of a mobile dental clinic or portable dental operation.

A. An applicant for registration of a mobile dental facility or portable dental operation shall provide:

1. The name and address of the owner of the facility or operation and an official address of record for the facility or operation, which shall not be a post office address. Notice shall be given to the board within 30 days if there is a change in the ownership or the address of record for a mobile dental facility or portable dental operation;

2. The name, address, and license number of each dentist and dental hygienist or the name, address, and registration number of each dental assistant II who will provide dental services in the facility or operation. The identity and license or registration number of any additional dentists, dental hygienists, or dental assistants II providing dental services in a mobile dental facility or portable dental operation shall be provided to the board in writing prior to the provision of such services; and

3. The address or location of each place where the mobile dental facility or portable dental operation will provide dental services and the dates on which such services will be provided. Any additional locations or dates for the provision of dental services in a mobile dental facility or portable dental operation shall be provided to the board in writing prior to the provision of such services.

B. The information provided by an applicant to comply with subsection A of this section shall be made available to the public.

C. An application for registration of a mobile dental facility or portable dental operation shall include:

1. Certification that there is a written agreement for follow-up care for patients to include identification of and arrangements for treatment in a dental office that is permanently established within a reasonable geographic area;

2. Certification that the facility or operation has access to communication facilities that enable the dental personnel to contact assistance in the event of a medical or dental emergency;

3. Certification that the facility has a water supply and all equipment necessary to provide the dental services to be rendered in the facility;

4. Certification that the facility or operation conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, sanitation, zoning, flammability, and construction standards; and

5. Certification that the applicant possesses all applicable city or county licenses or permits to operate the facility or operation.

D. Registration may be denied or revoked for a violation of provisions of § 54.1-2706 of the Code.

18VAC60-21-420. Requirements for a mobile dental clinic or portable dental operation.

A. The registration of the facility or operation and copies of the licenses of the dentists and dental hygienists or registrations of the dental assistants II shall be displayed in plain view of patients.

B. Prior to treatment, the facility or operation shall obtain written consent from the patient or, if the patient is a minor or incapable of consent, his parent, guardian, or authorized representative.

C. Each patient shall be provided with an information sheet, or if the patient, his parent, guardian, or authorized agent has given written consent to an institution or school to have access to the patient's dental health record, the institution or school may be provided a copy of the information. At a minimum, the information sheet shall include:

1. Patient name, date of service, and location where treatment was provided;

2. Name of dentist or dental hygienist who provided services;

3. Description of the treatment rendered and tooth numbers, when appropriate;

4. Billed service codes and fees associated with treatment;

5. Description of any additional dental needs observed or diagnosed;

6. Referral or recommendation to another dentist if the facility or operation is unable to provide follow-up treatment; and

7. Emergency contact information.

D. Patient records shall be maintained, as required by 18VAC60-21-90, in a secure manner within the facility or at the address of record listed on the registration application. Records shall be made available upon request by the patient, his parent, guardian, or authorized representative and shall be available to the board for inspection and copying.

E. The practice of dentistry and dental hygiene in a mobile dental clinic or portable dental operation shall be in accordance with the laws and regulations governing such practice.

18VAC60-21-430. Exemptions from requirement for registration.

The following shall be exempt from requirements for registration as a mobile dental clinic or portable dental operation:

1. All federal, state, or local governmental agencies; and

2. Dental treatment that is provided without charge to patients or to any third party payer.

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 (18VAC60-21)

Application Requirements for Faculty License (rev. 6/13)

Application for Registration for Volunteer Practice (rev. 8/08)

Requirements and Instructions for a Temporary Resident's License for Persons Enrolled in Advanced Dental Education Programs (rev. 7/12)

Application for a Permit to Administer Conscious/Moderate Sedation (rev. 10/12)

Application for a Permit to Administer Deep Sedation/General Anesthesia (rev. 10/12)

Application for Certification to Perform Cosmetic Procedures (rev. 3/12)

Application Requirements for Restricted Dental Volunteer License (rev. 11/10)

Oral and Maxillofacial Surgeon Registration of Practice (rev. 9/10)

Application for Registration of a Mobile Dental Facility or Portable Dental Operation (rev. 6/10)

Oral and Maxillofacial Surgeon Reinstatement of Registration of Practice (rev. 9/10)

Instructions for Application for Reactivation of License (rev. 8/10)

Instructions for Reinstatement of License (rev. 5/10)

Instructions for Filing Online Application for Licensure by Examination or Credentials for Dentists (rev. 9/12)

Licensure Procedures for Application for Registration for Volunteer Practice (rev. 5/08)

Sponsor Certification for Volunteer Registration (rev. 5/08)

CHAPTER 25
REGULATIONS GOVERNING THE PRACTICE OF DENTAL HYGIENE

Part I
General Provisions

18VAC60-25-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

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

"Active practice" means clinical practice as a dental hygienist for at least 600 hours per year.

"ADA" means the American Dental Association.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Direction" means the level of supervision (i.e., direct, indirect, or general) that a dentist is required to exercise with a dental hygienist or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of Regulations Governing the Practice of Dentistry.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Topical oral anesthestic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-25-20. Address of record; posting of license.

A. Address of record. Each licensed dental hygienist shall provide the board with a current address of record. All required notices and correspondence mailed by the board to any such licensee shall be validly given when mailed to the address of record on file with the board. Each licensee may also provide a different address to be used as the public address, but if a second address is not provided, the address of record shall be the public address. All changes of address shall be furnished to the board in writing within 30 days of such changes.

B. Posting of license. In accordance with § 54.1-2727 of the Code, a dental hygienist shall display a license where it is conspicuous and readable by patients. If a licensee is employed in more than one office, a duplicate license obtained from the board may be displayed.

18VAC60-25-30. Required fees.

A. Application fees.

1. License by examination	$175
2. License by credentials	$275
3. License to teach dental hygiene pursuant to § 54.1-2725 of the Code	$175
4. Temporary permit pursuant to § 54.1-2726 of the Code	$175
3. Restricted volunteer license	$25
4. Volunteer exemption registration	$10

B. Renewal fees.

1. Active license	$75
2. Inactive license	$40
3. License to teach dental hygiene pursuant to § 54.1-2725	$75

4. Temporary permit pursuant to § 54.1-2726	$75

C. Late fees.

1. Active license	$25
2. Inactive license	$15
3. License to teach dental hygiene pursuant to § 54.1-2725	$25
4. Temporary permit pursuant to § 54.1-2726	$25

D. Reinstatement fees.

1. Expired license	$200
2. Suspended license	$400
3. Revoked license	$500

E. Administrative fees.

1. Duplicate wall certificate	$60
2. Duplicate license	$20
3. Certification of licensure	$35
4. Returned check	$35

F. No fee shall be refunded or applied for any purpose other than the purpose for which the fee was submitted.

Part II
Practice of Dental Hygiene

18VAC60-25-40. Scope of practice.

A. Pursuant to § 54.1-2722 of the Code, a licensed dental hygienist may perform services that are educational, diagnostic, therapeutic, or preventive under the direction and indirect or general supervision of a licensed dentist.

B. The following duties of a dentist shall not be delegated:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue, except as may be permitted by subdivisions C 1 and D 1 of this section;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 C may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administration of deep sedation or general anesthesia and conscious/moderate sedation;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in Part IV (18VAC60-25-130 et seq.) of this chapter;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

C. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and athermal lasers with any sedation or anesthesia administered by the dentist.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

D. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with § 54.1-2722 D of the Code to be performed under general supervision:

1. Scaling, root planning, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and athermal lasers with or without topical oral anesthestics.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival and gingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in subsection B of this section and those restricted to indirect supervision in subsection C of this section.

E. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations with a slow speed handpiece;

4. Taking final impressions;

5. Use of a non-epinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

18VAC60-25-50. Utilization of dental hygienists and dental assistants.

A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services additional dental hygienists to practice under general supervision in a free clinic, a public health program, or a voluntary practice.

18VAC60-25-60. Delegation of services to a dental hygienist.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter, Part III (18VAC60-21-110 et seq.) of the Regulations Governing the Practice of Dentistry, and the Code.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-25-50.

C. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specified time period, not to exceed 10 months from the date the dentist last performed a periodic examination of the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment under general supervision.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that a dentist may not be present, that only topical oral anesthetics can be administered to manage pain, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

D. An order for treatment under general supervision shall not preclude the use of another level of supervision when, in the professional judgment of the dentist, such level of supervision is necessary to meet the individual needs of the patient.

18VAC60-25-70. Delegation of services to a dental assistant.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction of a dentist or a dental hygienist practicing under general supervision as permitted in subsection B of this section, with the exception of those listed as nondelegable and those which may only be delegated to dental hygienists as listed in 18VAC60-25-40.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant, and being available for consultation on patient care.

18VAC60-25-80. Radiation certification.

No dentist or dental hygienist shall permit a person not otherwise licensed by this board to place or expose dental x-ray film unless he has one of the following: (i) satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene, or dentistry accredited by CODA; (ii) certification by the American Registry of Radiologic Technologists; or (iii) satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety Exam given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-25-90. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. General oral health education.

2. Recording a patient's pulse, blood pressure, temperature, presenting complaint, and medical history.

3. Conducting preliminary dental screenings in free clinics, public health programs, or a voluntary practice.

18VAC60-25-100. Administration of controlled substances.

A. A licensed dental hygienist may:

1. Administer topical oral fluoride varnish to children aged six months to three years of age under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine pursuant to subsection V of § 54.1-3408 of the Code;

2. Administer topical Schedule VI drugs, including topical oral fluorides, topical oral anesthetics, and topical and directly applied antimicrobial agents for treatment of

periodontal pocket lesions pursuant to subsection J of § 54.1-3408 of the Code; and

3. If qualified in accordance with subsection B or C of this section, administer Schedule VI nitrous oxide/inhalation analgesia and, to persons 18 years of age or older, Schedule VI parenterally local anesthesia under the indirect supervision of a dentist.

B. To administer only nitrous oxide/inhalation analgesia, a dental hygienist shall:

1. Successfully complete a didactic and clinical course leading to certification in administration of nitrous oxide offered by a CODA accredited dental or dental hygiene program, which includes a minimum of eight hours in didactic and clinical instruction in the following topics:

a. Patient physical and psychological assessment;

b. Medical history evaluation;

c. Equipment and techniques used for administration of nitrous oxide;

d. Neurophysiology of nitrous oxide administration;

e. Pharmacology of nitrous oxide;

f. Recordkeeping, medical, and legal aspects of nitrous oxide;

g. Adjunctive uses of nitrous oxide for dental patients; and

h. Clinical experiences in administering nitrous oxide, including training with live patients.

2. Successfully complete an examination with a minimum score of 75% in the administration of nitrous oxide/inhalation analgesia given by the accredited program.

C. To administer both nitrous oxide/inhalation analgesia and, to patients 18 years of age or older, parenterally local anesthesia, a dental hygienist shall:

1. Successfully complete a didactic and clinical course leading to certification in administration of local anesthesia and nitrous oxide/inhalation analgesia that is offered by a CODA accredited dental or dental hygiene program, which includes a minimum of 36 didactic and clinical hours in the following topics:

a. Patient physical and psychological assessment;

b. Medical history evaluation and recordkeeping;

c. Neurophysiology of local anesthesia;

d. Pharmacology of local anesthetics and vasoconstrictors;

e. Anatomical considerations for local anesthesia;

f. Techniques for maxillary infiltration and block anesthesia;

g. Techniques for mandibular infiltration and block anesthesia;

h. Local and systemic anesthetic complications;

i. Management of medical emergencies;

j. Clinical experiences in maxillary and mandibular infiltration and block injections;

k. Pharmacology of nitrous oxide;

l. Adjunctive uses of nitrous oxide for dental patients; and

m. Clinical experiences in administering nitrous oxide and local anesthesia injections on patients.

2. Successfully complete an examination with a minimum score of 75% in the administration of nitrous oxide/inhalation analgesia and local anesthesia given by the accredited program.

D. A dental hygienist who holds a certificate or credential issued by the licensing board of another jurisdiction of the United States that authorizes the administration of nitrous oxide/inhalation analgesia or local anesthesia may be authorized for such administration in Virginia if:

1. The qualifications on which the credential or certificate was issued were substantially equivalent in hours of instruction and course content to those set forth in subsections B and C of this section; or

2. If the certificate or credential issued by another jurisdiction was not substantially equivalent, the hygienist can document experience in such administration for at least 24 of the past 48 months preceding application for licensure in Virginia.

E. A dentist who provides direction for the administration of nitrous oxide/inhalation analgesia or local anesthesia shall ensure that the dental hygienist has met the qualifications for such administration as set forth in this section.

Part III
Standards of Conduct

18VAC60-25-110. Patient records; confidentiality.

A. A dental hygienist shall be responsible for accurate and complete information in patient records for those services provided by a hygienist or a dental assistant under direction to include the following:

1. Patient's name on each page in the patient record;

2. A health history taken at the initial appointment, which is updated when local anesthesia or nitrous oxide/inhalation analgesia is to be administered and when medically indicated and at least annually;

3. Options discussed and oral or written consent for any treatment rendered with the exception of prophylaxis;

4. List of drugs administered and the route of administration, quantity, dose, and strength;

5. Radiographs, digital images, and photographs clearly labeled with the patient's name and date taken;

6. A notation or documentation of an order required for treatment of a patient by a dental hygienist practicing

under general supervision as required in 18VAC60-25-60 C; and

7. Notation of each date of treatment and the identity of the dentist and the dental hygienist providing service.

B. A dental hygienist shall comply with the provisions of § 32.1-127.1:03 of the Code related to the confidentiality and disclosure of patient records. A dental hygienist shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the hygienist shall not be considered negligent or willful.

18VAC60-25-120. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code:

1. Fraudulently obtaining, attempting to obtain, or cooperating with others in obtaining payment for services.

2. Performing services for a patient under terms or conditions that are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress.

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use.

4. Committing any act in violation of the Code reasonably related to the practice of dentistry and dental hygiene.

5. Delegating any service or operation that requires the professional competence of a dentist or dental hygienist to any person who is not a licensee or registrant as authorized by this chapter.

6. Certifying completion of a dental procedure that has not actually been completed.

7. Violating or cooperating with others in violating provisions of Chapter 1 (§ 54.1-100 et seq.) or 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code or the Drug Control Act (§ 54.1-3400 et seq. of the Code).

Part IV
Requirements for Licensure

18VAC60-25-130. General application requirements.

A. All applications for licensure by examination or credentials, temporary permits, or teacher's licenses shall include:

1. Verification of completion of a dental hygiene degree or certificate from a CODA accredited program;

2. An original grade card from the National Board Dental Hygiene Examination issued by the Joint Commission on National Dental Examinations;

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB); and

4. Attestation of having read and understood the laws and the regulations governing the practice of dentistry and dental hygiene in Virginia and of the applicant's intent to remain current with such laws and regulations.

B. If documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure.

18VAC60-25-140. Licensure by examination.

A. An applicant for licensure by examination shall have:

1. Graduated from or have been issued a certificate by a CODA accredited program of dental hygiene;

2. Successfully completed the National Board Dental Hygiene Examination given by the Joint Commission on National Dental Examinations; and

3. Successfully completed a board-approved clinical competency examination in dental hygiene.

B. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

C. Applicants who successfully completed a board-approved examination five or more years prior to the date of receipt of their applications for licensure by the board may be required to retake a board-approved examination or take board-approved continuing education that meets the requirements of 18VAC60-25-190, unless they demonstrate that they have maintained clinical, unrestricted, and active practice in a jurisdiction of the United States for 48 of the past 60 months immediately prior to submission of an application for licensure.

18VAC60-25-150. Licensure by credentials.

An applicant for dental hygiene licensure by credentials shall:

1. Have graduated from or have been issued a certificate by a CODA accredited program of dental hygiene;

2. Be currently licensed to practice dental hygiene in another jurisdiction of the United States and have clinical, ethical, and active practice for 24 of the past 48 months immediately preceding application for licensure;

3. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;

4. Have successfully completed a clinical competency examination substantially equivalent to that required for licensure by examination;

5. Not have committed any act that would constitute a violation of § 54.1-2706 of the Code; and

6. Have successfully completed the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to the board.

18VAC60-25-160. Temporary permit; teacher's license.

A. Issuance of a temporary permit.

1. A temporary permit shall be issued only for the purpose of allowing dental hygiene practice as limited by § 54.1-2726 of the Code. An applicant for a temporary permit shall submit a completed application and verification of graduation from the program from which the applicant received the dental hygiene degree or certificate.

2. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking a board-approved clinical competency examination during the term of the temporary permit.

B. The board may issue a teacher's license pursuant to the provisions of § 54.1-2725 of the Code.

C. A dental hygienist holding a temporary permit or a teacher's license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

18VAC60-25-170. Voluntary practice.

A. Restricted volunteer license.

1. In accordance with § 54.1-2726.1 of the Code, the board may issue a restricted volunteer license to a dental hygienist who:

a. Held an unrestricted license in Virginia or another jurisdiction of the United States as a licensee in good standing at the time the license expired or became inactive;

b. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

c. Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry and dental hygiene in Virginia;

d. Has not failed a clinical examination within the past five years;

e. Has had at least five years of active practice in Virginia; another jurisdiction of the United States or federal civil or military service; and

f. Is sponsored by a dentist who holds an unrestricted license in Virginia.

2. A person holding a restricted volunteer license under this section shall:

a. Practice only under the direction of a dentist who holds an unrestricted license in Virginia;

b. Only practice in public health or community free clinics that provide dental services to underserved populations;

c. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

d. Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and

e. Not be required to complete continuing education in order to renew such a license.

3. A restricted volunteer license granted pursuant to this section shall expire on June 30 of the second year after its issuance or shall terminate when the supervising dentist withdraws his sponsorship.

4. A dental hygienist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

B. Registration for voluntary practice by out-of-state licensees. Any dental hygienist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

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

2. Provide a copy of a current license or certificate to practice dental hygiene;

3. Provide a complete record of professional licensure in each jurisdiction in the United States in which he has held a license or certificate;

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

5. Pay a registration fee as required in 18VAC60-25-30; and

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

Part V
Licensure Renewal and Reinstatement

18VAC60-25-180. Requirements for licensure renewal.

A. An active dental hygiene license shall be renewed on or before March 31 each year. A teacher's license, a restricted volunteer license, or a temporary permit shall be renewed on or before June 30 each year.

B. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dental hygiene shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2726.1 of the Code, practicing in Virginia with an expired license may subject the licensee to disciplinary action by the board.

C. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee. The board may renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

18VAC60-25-190. Requirements for continuing education.

A. In order to renew an active license, a dental hygienist shall complete a minimum of 15 hours of approved continuing education. 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.

1. A dental hygienist shall be required to maintain evidence of successful completion of a current hands-on course in basic cardiopulmonary resuscitation for health care providers.

2. A dental hygienist who monitors patients under general anesthesia, deep sedation, or conscious sedation or who administers nitrous oxide or nontopical local anesthesia 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.

B. An approved continuing education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dental or dental hygiene practice; or

2. Nonclinical subjects that relate to the skills necessary to provide dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, risk management, and recordkeeping). 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 course, to include audio and video presentations, that meets the requirements in subdivision B 1 of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association and their constituent and component/branch associations;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry and its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. 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 Healthcare Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

10. A medical school 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. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board; or

15. 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. Verification of compliance.

1. All licensees are required to verify compliance with continuing education requirements at the time of annual license renewal.

2. Following the renewal period, the board may conduct an audit of licensees to verify compliance.

3. Licensees 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.

4. Licensees are required to maintain original documents verifying the date and the subject of the program or activity, the sponsor, and the amount of time earned. Documentation must be maintained for a period of four years following renewal.

5. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

E. Exemptions.

1. A licensee is exempt from completing continuing education requirements and considered in compliance on

the first renewal date following the licensee's initial licensure.

2. 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. A written request with supporting documents must be submitted at least 30 days prior to the deadline for renewal.

F. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

18VAC60-25-200. Inactive license.

A. Any dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license.

B. With the exception of practice with a restricted volunteer license as provided in § 54.1-2726.1 of the Code, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dental hygiene in Virginia.

C. An inactive dental hygiene license may be renewed on or before March 31 of each year.

18VAC60-25-210. Reinstatement or reactivation of a license.

A. Reinstatement of an expired license.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application and the reinstatement fee.

2. An applicant for reinstatement shall submit evidence of completion of continuing education that meets the requirements of 18VAC60-25-190 and is equal to the requirement for the number of years in which his license has not been active in Virginia, 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.

3. An applicant for reinstatement shall also provide evidence of continuing competence that may also include (i) documentation of active practice in another state or in federal service, (ii) recent passage of a clinical competency examination accepted by the board, or (iii) completion of a refresher program offered by a CODA accredited program.

4. The executive director may reinstate a license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code and 18VAC60-25-120 to deny said reinstatement, and that the applicant has paid the reinstatement fee and any fines or assessments.

B. Reactivation of an inactive license.

1. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education that meets the requirements of 18VAC60-25-190 and is equal to the requirement for the number of years in which the license has been inactive, 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 immediately preceding the application for activation.

2. An applicant for reactivation shall also provide evidence of continuing competence that may also include (i) documentation of active practice in another state or in federal service, (ii) recent passage of a clinical competency examination accepted by the board, or (iii) completion of a refresher program offered by a CODA accredited program.

3. The executive director may reactivate a license provided that the applicant can demonstrate continuing competence and that no grounds exist pursuant to § 54.1-2706 of the Code and 18VAC60-25-120 to deny said reactivation.

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 (18VAC60-25)

Instructions for Filing Online Application for Licensure by Examination or Endorsement for Dental Hygienists (rev. 9/13)

Licensure Procedures for Application for Registration for Volunteer Practice (rev. 8/08)

Instructions and Application for Reactivation of License (rev. 2/10)

Instructions and Application for Reinstatement of License (rev. 5/10)

Application Requirements and Application for Restricted Dental Hygiene Volunteer License (rev. 11/10)

Sponsor Certification for Volunteer Registration (rev. 5/08)

CHAPTER 30
REGULATIONS GOVERNING THE PRACTICE OF DENTAL ASSISTANTS II

Part I
General Provisions

18VAC60-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

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

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-30-60 and 18VAC60-30-70.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., direct, indirect or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of Regulations Governing the Practice of Dentistry.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

18VAC60-30-20. Address of record; posting of registration.

A. Address of record. Each registered dental assistant II shall provide the board with a current address of record. All required notices and correspondence mailed by the board to any such registrant shall be validly given when mailed to the address of record on file with the board. Each registrant may also provide a different address to be used as the public address, but if a second address is not provided, the address of record shall be the public address. All changes of address shall be furnished to the board in writing within 30 days of such changes.

B. Posting of registration. A copy of the registration of a dental assistant II shall either be posted in an operatory in which the person is providing services to the public or in the patient reception area where it is clearly visible to patients and accessible for reading.

18VAC60-30-30. Required fees.

A. Initial registration fee.	$100
B. Renewal fees.	
1. Dental assistant II registration - active	$50
2. Dental assistant II registration - inactive	$25
C. Late fees.	
1. Dental assistant II registration - active	$20
2. Dental assistant II registration - inactive	$10
D. Reinstatement fees.	
1. Expired registration	$125
2. Suspended registration	$250
3. Revoked registration	$300
E. Administrative fees.	
1. Duplicate wall certificate	$60
2. Duplicate registration	$20
3. Registration verification	$35
4. Returned check fee	$35

F. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

Part II
Practice of Dental Assistants II

18VAC60-30-40. Practice of dental hygienists and dental assistants II under direction.

A. A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services additional dental hygienists to practice under general supervision in a free clinic, a public health program, or a voluntary practice.

B. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter, Part III (18VAC60-21-110 et seq.) of the Regulations Governing the Practice of Dentistry, and the Code.

18VAC60-30-50. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administering and monitoring conscious/moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and subsections J and K of 18VAC60-21-260;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

18VAC60-30-60. Delegation to dental assistants II.

The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience, and examinations specified in 18VAC60-30-120:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations with a slow speed handpiece;

4. Taking final impressions;

5. Use of a non-epinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

18VAC60-30-70. Delegation to dental assistants I and II.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant I or II under the indirect or under general supervision required in 18VAC60-21-120, with the exception of those listed as nondelegable in 18VAC60-30-50, those which may only be delegated to dental hygienists as listed in 18VAC60-21-140, and those which may only be delegated to a dental assistant II as listed in 18VAC60-30-60.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant, and being available for consultation on patient care.

18VAC60-30-80. Radiation certification.

No dentist or dental hygienist shall permit a person not otherwise licensed by this board to place or expose dental x-ray film unless he has one of the following: (i) satisfactory completion of a radiation safety course and examination given by an institution that maintains a program in dental assisting, dental hygiene, or dentistry accredited by CODA; (ii) certification by the American Registry of Radiologic Technologists; or (iii) satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety Exam given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-30-90. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. General oral health education.

2. Recording a patient's pulse, blood pressure, temperature, presenting complaint, and medical history.

Part III
Standards of Conduct

18VAC60-30-100. Patient records; confidentiality.

A. A dental assistant II shall be responsible for accurate and complete information in patient records for those services provided by the assistant under direction to include the following:

1. Patient's name on each page in the patient record;

2. Radiographs, digital images, and photographs clearly labeled with the patient name and date taken; and

3. Notation of each date of treatment and the identity of the dentist, the dental hygienist, or the dental assistant providing service.

B. A dental assistant shall comply with the provisions of § 32.1-127.1:03 of the Code related to the confidentiality and disclosure of patient records. A dental assistant shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the assistant shall not be considered negligent or willful.

18VAC60-30-110. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code:

1. Fraudulently obtaining, attempting to obtain, or cooperating with others in obtaining payment for services.

2. Performing services for a patient under terms or conditions that are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress.

3. Misrepresenting to a patient and the public the materials or methods and techniques used or intended to be used.

4. Committing any act in violation of the Code reasonably related to dental practice.

5. Delegating any service or operation that requires the professional competence of a dentist, dental hygienist, or dental assistant II to any person who is not authorized by this chapter.

6. Certifying completion of a dental procedure that has not actually been completed.

7. Violating or cooperating with others in violating provisions of Chapter 1 (§ 54.1-100 et seq.) or 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code or the Drug Control Act (§ 54.1-3400 et seq. of the Code).

Part IV
Entry Requirements for Dental Assistants II

18VAC60-30-120. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board.

B. To be registered as a dental assistant II, a person shall complete the following requirements from an educational program accredited by CODA:

1. At least 50 hours of didactic course work in dental anatomy and operative dentistry that may be completed online.

2. Laboratory training that may be completed in the following modules with no more than 20% of the specified instruction to be completed as homework in a dental office:

a. At least 40 hours of placing, packing, carving, and polishing of amalgam restorations and pulp capping procedures;

b. At least 60 hours of placing and shaping composite resin restorations and pulp capping procedures;

c. At least 20 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 30 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

3. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training that may be completed in a dental office in the following modules:

a. At least 80 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 120 hours of placing and shaping composite resin restorations;

c. At least 40 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 60 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

4. Successful completion of the following competency examinations given by the accredited educational programs:

a. A written examination at the conclusion of the 50 hours of didactic coursework;

b. A practical examination at the conclusion of each module of laboratory training; and

c. A comprehensive written examination at the conclusion of all required coursework, training, and experience for each of the corresponding modules.

C. All treatment of patients shall be under the direct and immediate supervision of a licensed dentist who is responsible for the performance of duties by the student. The dentist shall attest to successful completion of the clinical competencies and restorative experiences.

18VAC60-30-130. Registration certification.

A. All applicants for registration as a dental assistant II shall provide evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another certification from a credentialing

organization recognized by the American Dental Association and acceptable to the board, which was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control.

B. All applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for registration by the board may be required to retake the board-approved examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for registration.

C. All applicants for registration as a dental assistant II shall be required to attest that they have read and understand and will remain current with the applicable Virginia dental and dental hygiene laws and the regulations of this board.

18VAC60-30-140. Registration by endorsement as a dental assistant II.

A. An applicant for registration by endorsement as a dental assistant II shall provide evidence of the following:

1. Hold current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association;

2. Be currently authorized to perform expanded duties as a dental assistant in each jurisdiction of the United States;

3. Hold a credential, registration, or certificate with qualifications substantially equivalent in hours of instruction and course content to those set forth in 18VAC60-30-120 or if the qualifications were not substantially equivalent the dental assistant can document experience in the restorative and prosthetic expanded duties set forth in 18VAC60-30-60 for at least 24 of the past 48 months preceding application for registration in Virginia.

B. An applicant shall also:

1. Be certified to be in good standing from each jurisdiction of the United States in which he is currently registered, certified, or credentialed or in which he has ever held a registration, certificate, or credential;

2. Not have committed any act that would constitute a violation of § 54.1-2706 of the Code; and

3. Attest to having read and understand and to remain current with the laws and the regulations governing dental practice in Virginia.

Part V
Requirements for Renewal and Reinstatement

18VAC60-30-150. Registration renewal requirements.

A. Every person holding an active or inactive registration shall annually, on or before March 31, renew his registration. Any person who does not return the completed form and fee by the deadline shall be required to pay an additional late fee.

B. The registration of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid and his practice as a dental assistant II shall be illegal. Practicing in Virginia with an expired registration may subject the registrant to disciplinary action by the board.

C. In order to renew registration, a dental assistant II shall be required to maintain and attest to current certification from the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association.

D. A dental assistant II shall also be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

E. Following the renewal period, the board may conduct an audit of registrants to verify compliance. Registrants selected for audit must provide original documents certifying current certification.

F. Continuing education hours required by board order shall not be used to satisfy the requirement for registration renewal or reinstatement.

18VAC60-30-160. Inactive registration.

Any dental assistant II who holds a current, unrestricted registration in Virginia may upon a request on the renewal application and submission of the required fee be issued an inactive registration. The holder of an inactive registration shall not be entitled to perform any act requiring registration to practice as a dental assistant II in Virginia. An inactive registration may be reactivated upon submission of evidence of current certification from the national credentialing organization recognized by the American Dental Association. The board reserves the right to deny a request for reactivation to any registrant who has been determined to have committed an act in violation of § 54.1-2706 of the Code.

18VAC60-30-170. Registration reinstatement requirements.

A. The board shall reinstate an expired registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of 18VAC60-30-150, provided that no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and 18VAC60-30-110.

B. 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.

C. The executive director may reinstate such expired registration provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and 18VAC60-30-110.

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 (18VAC60-30)

Application for Registration to Practice as a Dental Assistant II (rev. 2/12)

Application Requirements for Registration to Practice as a Dental Assistant II (rev. 2/12)

Form A - Certification of Dental Assisting Education (rev. 2/12)

Form B (rev. 10/11)

Form C - Certification of Authorization to Perform Expanded Duties as a Dental Assistant (rev. 3/11)

VA.R. Doc. No. R10-2362; Filed October 15, 2013, 11:34 a.m.

BOARD OF NURSING

Emergency Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-390).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Dates: October 11, 2013, through April 10, 2015.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Preamble:

Chapter 114 of the 2013 Acts of Assembly authorizes a person who has successfully completed a training program approved by the Board of Nursing to administer medications via percutaneous gastrostomy tube to a person receiving services from a program licensed by the Department of Behavioral Health and Developmental Services (DBHDS). An enactment clause requires the Board of Nursing to promulgate regulations for a training program within 280 days of enactment of the bill.

The amendments to 18VAC90-20-390 (Content of a medication administration training program) include a requirement to complete the curriculum approved by DBHDS for unlicensed persons to administer medication via a gastrostomy tube.

18VAC90-20-390. Content.

A. The curriculum shall include a minimum of 32 hours of classroom instruction and practice in the following:

1. Preparing for safe administration of medications to clients in specific settings by:

a. Demonstrating an understanding of the client's rights regarding medications, treatment decisions and confidentiality.

b. Recognizing emergencies and other health-threatening conditions and responding accordingly.

c. Identifying medication terminology and abbreviations.

2. Maintaining aseptic conditions by:

a. Implementing universal precautions.

b. Insuring cleanliness and disinfection.

c. Disposing of infectious or hazardous waste.

3. Facilitating client self-administration or assisting with medication administration by:

a. Reviewing administration records and prescriber's orders.

b. Facilitating client's awareness of the purpose and effects of medication.

c. Assisting the client to interpret prescription labels.

d. Observing the five rights of medication administration and security requirements appropriate to the setting.

e. Following proper procedure for preparing medications.

f. Measuring and recording vital signs to assist the client in making medication administration decisions.

g. Assisting the client to administer oral medications.

h. Assisting the client with administration of prepared instillations and treatments of:

(1) Eye drops and ointments.

(2) Ear drops.

(3) Nasal drops and sprays.

(4) Topical preparations.

(5) Compresses and dressings.

(6) Vaginal and rectal products.

(7) Soaks and sitz baths.

(8) Inhalation therapy.

(9) Oral hygiene products.

i. Reporting and recording the client's refusal to take medication.

j. Documenting medication administration.

k. Documenting and reporting medication errors.

l. Maintaining client records according to facility policy.

m. Sharing information with other staff orally and by using documents.

n. Storing and securing medications.

o. Maintaining an inventory of medications.

p. Disposing of medications.

4. Facilitating client self-administration or assisting with the administration of insulin. Instruction and practice in the administration of insulin shall be included only in those settings where required by client needs and shall include:

a. Cause and treatment of diabetes.

b. The side effects of insulin.

c. Preparation and administration of insulin.

B. Pursuant to § 54.1-3408 L of the Code of Virginia, the board requires successful completion of the curriculum approved by the Department of Behavioral Health and Developmental Services for unlicensed persons to administer medication via a gastrostomy tube to a person receiving services from a program licensed by the department.

VA.R. Doc. No. R14-3733; Filed October 11, 2013, 9:12 a.m.

BOARD OF VETERINARY MEDICINE

Final Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-75, 18VAC150-20-100).**

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

Effective Date: December 4, 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.

Summary:

The Board of Veterinary Medicine amendments increase fees charged to regulants and applicants. Annual renewal fees increase as follows: (i) for veterinarians, the increase is $40 per year; (ii) for veterinary technicians, the increase is $20 per year; (iii) for veterinary establishments, the increase is $60 per year; and (iv) for equine dental technicians, the increase is $20 per year. Other fees are increased proportionally.

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.

18VAC150-20-75. Expired license; reinstatement; practice with an expired or lapsed license not permitted.

A. A license may be renewed up to 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. A license shall automatically lapse if the licensee fails to renew by the expiration date. The practice of veterinary medicine without a current, active license is unlawful and may subject the licensee to disciplinary action by the board.

B. Reinstatement of licenses expired for more than one year shall be at the discretion of the board. To reinstate a license, the licensee shall pay the ~~renewal and~~ reinstatement ~~fees~~ fee 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.

18VAC150-20-100. Fees.

[~~A.~~] The following fees shall be in effect:

Veterinary application for licensure	$200
Veterinary ~~initial~~ license ~~or~~ renewal (active)	~~$135~~ $175
Veterinary license renewal (inactive)	~~$65~~ $85
Veterinary reinstatement of expired license	~~$175~~ $255
Veterinary license late renewal	~~$45~~ $60
Veterinarian reinstatement after disciplinary action	~~$300~~ $450
Veterinary technician application for licensure	$65
Veterinary technician ~~initial~~ license ~~or~~ renewal	~~$30~~ $50
Veterinary technician license renewal (inactive)	~~$15~~ $25
Veterinary technician license late renewal	~~$15~~ $20
Veterinary technician reinstatement of expired license	~~$50~~ $95
Veterinary technician reinstatement after disciplinary action	~~$75~~ $125
~~Initial veterinary establishment permit registration~~	~~$200~~
Equine dental technician initial registration	$100
Equine dental technician registration renewal	~~$50~~ $70
Equine dental technician late renewal	~~$20~~ $25
Equine dental technician reinstatement	$120
Initial veterinary establishment permit registration	$300
Veterinary establishment renewal	~~$140~~ $200

Veterinary establishment late renewal	~~$45~~ $75
Veterinary establishment reinstatement	~~$100~~ $350
Veterinary establishment reinspection	~~$200~~ $300
Veterinary establishment -- change of location	~~$200~~ $300
Veterinary establishment -- change of veterinarian-in-charge	~~$30~~ $40
Duplicate license	~~$10~~ $15
Duplicate wall certificate	$25
Returned check	$35
Licensure verification to another jurisdiction	~~$15~~ $25

[~~B. For the renewal of licensees and registrations due by January 1, 2013, the following one-time debt reduction fee will be assessed:~~

~~Veterinary license (active)~~	~~$100~~
~~Veterinary technician license~~	~~$50~~
~~Veterinary establishment~~	~~$200~~
~~Equine dental technician~~	~~$50~~
~~Veterinary license -- late fee on assessment~~	~~$60~~
~~Veterinary technician license -- late fee on assessment~~	~~$20~~
~~Veterinary establishment -- late fee on assessment~~	~~$75~~
~~Equine dental technician -- late fee on assessment~~	~~$20~~]

VA.R. Doc. No. R10-2132; Filed October 15, 2013, 10:23 a.m.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for Aging and Rehabilitative Services is conducting a periodic review and small business impact review of **22VAC30-50, Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund.** 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 November 4, 2013, and ends December 4, 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 Vanessa S. Rakestraw, Regulatory Coordinator, 8004 Franklin Farms Drive, Henrico, VA 23229, FAX (804) 662-7663, or email vanessa.rakestraw@dars.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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load Implementation Plan for Clinch River and Tributaries in Russell and Tazewell Counties

Announcement of a public meeting to present a draft total maximum daily load (TMDL) implementation plan for Clinch River from Big Cedar Creek confluence downstream to the Dumps Creek confluence and the following tributaries: Maiden Spring Creek and Little River in Tazewell County, Virginia, and Indian Creek, Weaver Creek, Swords Creek, Lewis Creek, and Big Cedar Creek in Russell County, Virginia.

Public meeting location: Lebanon Town Hall, 405 West Main Street, Lebanon, Virginia, on November 5, 2013, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing the final implementation plan to restore water quality, a public comment opportunity, and a public meeting.

Meeting description: Final public meeting on an implementation plan to restore water quality.

Description of plan: This plan follows a TMDL study developed for the Clinch River and tributaries including Maiden Spring Creek and Little River in Tazewell County, Virginia, and Indian Creek, Weaver Creek, Swords Creek, Lewis Creek, and Big Cedar Creek in Russell County, Virginia that identified bacteria contamination as the cause for the streams failure to meet the recreational use water quality standard.

The plan outlines the corrective actions needed to reduce the sources of bacteria and their associated costs and benefits, along with measurable goals, and an implementation timeline. The plan focuses on addressing the agricultural, residential, and urban sources of bacteria identified in the TMDL study.

How a decision is made: The development of a TMDL and a TMDL implementation plan 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 implementation plan to the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, November 4, 2013, to December 4, 2013. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available for 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, Virginia 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.

Total Maximum Daily Load for Crab Creek in Montgomery County

The Department of Environmental Quality (DEQ) will host a public meeting to discuss the development of a water quality improvement plan for reducing fecal bacteria contamination

and excessive sediment accumulation in Crab Creek within Montgomery County, Virginia. The purposes of the meeting are to review the status of water quality in Crab Creek, provide an overview of the plan development process, and begin discussions about actions needed to reduce agricultural, residential, and urban sources of fecal bacteria and sediment.

The public meeting will be held at the Montgomery County Government Center located at 755 Roanoke Street, Christiansburg, VA on November 12, 2013, from 7 p.m. to 9 p.m.

Fecal bacteria (e.g., E. coli) levels in Crab Creek exceed state water quality standards designed to protect primary contact recreation (e.g., swimming, wading, kayaking, etc.). Additionally, Crab Creek does not meet Virginia's general standard for water quality due to an excessive accumulation of sand, silt, and clay on the streambed that is harmful to aquatic life. Due to these water quality impairments, total maximum daily loads (TMDLs) for E. coli and sediment have been developed by DEQ. A TMDL describes the amount of pollution that a water body can receive and still meet water quality standards. The E. coli and sediment TMDL study for Crab Creek was completed in 2004. The Fecal Bacteria and General Standard TMDL Development for Crab Creek document can be located on DEQ's website at http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/newrvr/crabcr.pdf.

Sections 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia direct DEQ to develop and implement a plan to achieve full support of the designated uses (e.g. primary contact recreation, aquatic life) of impaired waters. These plans, referred to as TMDL implementation plans (IPs) must provide measurable goals and the date of expected achievement of water quality objectives. An IP must also contain the corrective actions needed and their associated costs, benefits, and environmental impacts.

Questions or information requests should be addressed to Patrick Lizon, TMDL/Watershed Field Coordinator, Virginia Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4803, or email patrick.lizon@deq.virginia.gov.

Total Maximum Daily Load for Tye River Watershed in Nelson County

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 Tye River watershed in Nelson County. The Tye River and its tributaries, Piney River, Hat Creek, and Rucker Run, were first listed as impaired on Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2004 (Hat Creek and Rucker Run), 2006 (Tye River), and 2008 (Piney Creek). The creeks have remained on the § 303(d) list for these impairments since then. The impaired segment of the Tye River extends from its confluence with the Piney River to its confluence with the James River (15.94 miles), while Hat Creek and Rucker Run are designated as impaired from their headwaters to their confluence with the Tye River (9.58 miles and 18.26 miles respectively). The impaired segment of the Piney River extends 13.3 miles upstream from its confluence with the Tye 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 TMDLs were completed by DEQ for the Tye River, Hat Creek, Rucker Run, and Piney River in April 2013, and were submitted to the federal Environmental Protection Agency for approval on August 16, 2013. The TMDL report is available on the DEQ website at www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

The first public meeting on the development of this TMDL implementation plan will be held on Thursday, November 7, 2013, at 7 p.m. at the Massie's Mill Ruritan Hall, 5439 Patrick Henry Highway, Roseland, VA.

The public comment period for the first public meeting will end December 9, 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, or email nesha.mcrae@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 7, 2013. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, VA.

Director's Order Number Seventy-Two (13)

Virginia's Online Game Lottery; "Fast Play Hallo-Win" Final Rules for Game Operation (effective on the date of its signing, August 28, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's

Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Hallo-Win" game rules)

Director's Order Number Seventy-Eight (13)

Virginia's Online Game Lottery; "Fast Play $15,000 Payday" Final Rules for Game Operation (effective on the date of its signing, August 28, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play $15,000 Payday" game rules)

Director's Order Number Eighty-Seven (13)

Virginia Lottery's "Flyaway with the Hokies Sweepstakes" Final Rules for Operation (effective nunc pro tunc to midnight on September 2, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Eighty-Eight (13)

Virginia Lottery's "Z-VA Promotion" Final Requirements for Operation (effective September 25, 2013)

Director's Order Number Eighty-Nine (13)

Virginia's Online Game Lottery; "Fast Play Wild Cherry Bingo" Final Rules for Game Operation (effective nunc pro tunc to September 24, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Wild Cherry Bingo" game rules)

Director's Order Number Ninety-One (13)

Virginia's Instant Game Lottery "$100,000 Crossword" Final Rules for Game Operation (effective October 3, 2013)

Director's Order Number Ninety-Two (13)

Virginia's Instant Game Lottery 1463 "$5,000 Payday" Final Rules for Game Operation (effective October 3, 2013)

Director's Order Number Ninety-Four (13)

"Coastal Investments Redskins Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (effective on the date of its signing, September 9, 2013, and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Ninety-Five (13)

Virginia's Instant Game Lottery "$20X the Money" Final Rules for Game Operation (effective October 3, 2013)

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Montgomery County Public Service Authority

An enforcement action has been proposed for the Montgomery County Public Service Authority (PSA) regarding the PSA's wastewater treatment plant in Riner, Virginia, for violations of State Water Control Law and the applicable permit and regulations. The proposed enforcement action includes a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from November 5, 2013, to December 4, 2013.

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.

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.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code.**

Publication: 29:24 VA.R. 3252-3282 July 29, 2013.

Correction to Proposed Regulation:

Pages 3269-3270, 13VAC5-51-131, subsections D through G should read as follows:

"~~C.~~ D. Change Section 314.1 to read:

314.1. General. Indoor displays constructed within any building or structure shall comply with Sections 314.2 through 314.5.

~~D.~~ E. Add Section 314.5 to read:

314.5. Smokeless powder and small arms primers. Venders shall not store, display, or sell smokeless powder or small arms primers during trade shows inside exhibition halls except as follows:

1. The amount of smokeless powder displayed by each vender is limited to the amount established in Section ~~3306.5.1.1~~ 5506.5.1.1.

2. The amount of smokeless powder each vender may store is limited to the storage arrangements and storage amounts established in Section ~~3306.5.2.1~~ 5506.5.2.1. Smokeless powder shall remain in the manufacturer's original sealed container, and the container shall remain sealed while inside the building. The repackaging of smokeless powder shall not be performed inside the building. Damaged containers shall not be repackaged inside the building and shall be immediately removed from the building in such manner to avoid spilling any powder.

3. There shall be at least 50 feet separation between venders and 20 feet from any exit.

4. Small arms primers shall be displayed and stored in the manufacturer's original packaging and in accordance with the requirements of Section ~~3306.5.2.3~~ 5506.5.2.3.

~~E.~~ F. Change Section ~~315.3~~ 315.4 to read:

~~315.3~~ 315.4. Outside storage. Outside storage of combustible materials shall not be located within 10 feet (3048 mm) of a property line or other building on the site.

Exceptions:

1. The separation distance is allowed to be reduced to 3 feet (914 mm) for storage not exceeding 6 feet (1829 mm) in height.

2. The separation distance is allowed to be reduced when the fire official determines that no hazard to the adjoining property exists.

~~F.~~ G. Change Section ~~315.3.1~~ 315.4.1 to read:

~~315.3.1~~ 315.4.1. Storage beneath overhead projections from buildings. To the extent required by the code the building was constructed under, when buildings are required to be protected by automatic sprinklers, the outdoor storage, display, and handling of combustible materials under eaves, canopies, or other projections or overhangs is prohibited except where automatic sprinklers are installed under such eaves, canopies, or other projections or overhangs."

VA.R. Doc. No. R12-3161; Filed October 15, 2013, 3:46 p.m.