VIRGINIA REGISTER OF REGULATIONS

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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).

January 2016 through December 2016

Volume: Issue	Material Submitted By Noon*	Will Be Published On
32:10	December 21, 2015 **(Monday)**	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016
32:15	March 2, 2016	March 21, 2016
32:16	March 16, 2016	April 4, 2016
32:17	March 30, 2016	April 18, 2016
32:18	April 13, 2016	May 2, 2016
32:19	April 27, 2016	May 16, 2016
32:20	May 11, 2016	May 30, 2016
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32:25	July 20, 2016	August 8, 2016
32:26	August 3, 2016	August 22, 2016
33:1	August 17, 2016	September 5, 2016
33:2	August 31, 2016	September 19, 2016
33:3	September 14, 2016	October 3, 2016
33:4	September 28, 2016	October 17, 2016
33:5	October 12, 2016	October 31, 2016
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 **(Tuesday)**	December 12, 2016
33:9	December 7, 2016	December 26, 2016

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-172, Regulations Relating to Private Security Services Businesses**, and **6VAC20-174, Regulations Relating to Private Security Services Registered Personnel**. The purpose of the proposed action is to amend the regulations to allow for licensed private security services businesses licensed by the Department of Criminal Justice Services (DCJS) to independently contract with private investigators and personal protection specialists registered with DCJS. Additionally, the proposed amendments will require that every registered personal protection specialist and private investigator hired as an independent contractor maintain comprehensive general liability insurance in the amount to be determined by DCJS and provide evidence of such insurance to the business with which they are contracting. The changes will address the requirements of Chapter 202 of the 2015 Acts of Assembly, which became effective July 1, 2015.

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

Statutory Authority: §§ 9.1-102 and 9.1-141 of the Code of Virginia.

Public Comment Deadline: February 10, 2016.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

VA.R. Doc. No. R16-4548; Filed December 10, 2015, 4:19 p.m.

TITLE 12. HEALTH

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 **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care**, and **12VAC30-141, Family Access to Medical Insurance Security Plan**. The purpose of the proposed action is to consider standardizing (i) the utilization review process for all provider types, including the deadlines for providers to submit documentation, (ii) documentation deadlines for the cost settlement process, and (iii) the audit process, including what letters are sent to providers, what documentation may be submitted and when it may be submitted, and what deadlines apply. The proposed action is intended to conform the Medicaid and Family Access to Medical Insurance Security Plan utilization review regulations to decisions of the Virginia Court of Appeals in 1st Stop Health Services, Inc. vs. DMAS, 63 Va. App. 266, 756 S.E.2d 183 (2014) and DMAS v. Ablix Corporation, 2015 Va. App. LEXIS 82 (March 17, 2015).

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

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

Public Comment Deadline: February 10, 2016.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R16-4492; Filed December 11, 2015, 12:32 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-120, Waivered Services**, and **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services**. The purpose of the proposed action is to consider standardizing the requirements for qualifications, education, and training for consumer-directed service facilitators across the waivers that require service facilitators (SFs) to ensure the health, safety, and welfare of Medicaid home and community-based waiver enrollees. The proposed amendments include the following: (i) SFs who are not licensed nurses are required to advise, with the permission of the waiver individuals, the primary health care provider that services are being provided; (ii) SFs are required to have sufficient knowledge, skills, and abilities to perform the activities that are required of them; (iii) SFs must have a satisfactory work record and submit to a criminal background check; (iv) SFs must submit to a check of the Department of Social Services Child Protective Services Central Registry; (v) SFs must not be debarred, suspended, other otherwise excluded from participating in this federal health care program; (vi) new SFs, must have, at a minimum, an associate's degree in a health or human services field or be a registered nurse currently licensed in the Commonwealth and possess a minimum of two years of satisfactory direct care experience or hold a bachelor's degree or higher in a non-health or human services field and have at least three years of satisfactory direct care experience; (vii) SFs must complete the DMAS-approved consumer-directed services facilitator

training and pass the corresponding competency assessment with at least a score of 80%; and (viii) SFs must have access to a computer with secure Internet access.

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

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

Public Comment Deadline: February 10, 2016.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R16-3805; Filed December 17, 2015, 3:05 p.m.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA WORKERS' COMPENSATION COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Workers' Compensation Commission intends to consider amending **16VAC30-50, Rules of the Virginia Workers' Compensation Commission**. The purpose of the proposed action is to reduce the number of communities for the purposes of determining the liability of employers and insurers for the cost of medical services rendered to injured workers pursuant to § 65.2-605 of the Code of Virginia from 15 communities based on Planning District Commission Districts to five communities based on Health Planning Districts and geographic contiguity.

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

Statutory Authority: § 65.2-201 of the Code of Virginia.

Public Comment Deadline: February 10, 2016.

Agency Contact: Jim Szablewicz, Chief Deputy Commissioner, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23030, telephone (804) 367-8664, or email james.szablewicz@workcomp.virginia.gov.

VA.R. Doc. No. R16-4565; Filed December 11, 2015, 4:15 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

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 Social Work intends to consider amending **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to (i) require submission of an application for licensure within two years of completion of supervised experience; (ii) require registration of supervision whenever there is a change in the supervisor, the supervised practice, or clinical services or location; and (iii) add romantic relationships with clients as grounds for unprofessional conduct.

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

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

Public Comment Deadline: February 10, 2016.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R16-4574; Filed December 11, 2015, 12:59 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF SOCIAL SERVICES

Withdrawal of 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 Social Services has WITHDRAWN the Notice of Intended Regulatory Action regarding the repeal of **22VAC40-80, General Procedures and Information for Licensure**, and the promulgation of a comprehensive new regulation **22VAC40-81, General Information and Procedures for Licensure**, which was published in 31:22 VA.R. 1896 June 29, 2015. The need for additional review and revision of the proposed regulation was identified. The board intends to initiate a new action at a future time.

Agency Contact: Janice Sigler, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7901, FAX (804) 726-7132, or email jan.sigler@dss.virginia.gov.

VA.R. Doc. No. R15-4418; Filed December 11, 2015, 11:49 a.m.

Withdrawal of 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 Social Services has WITHDRAWN the Notice of Intended Regulatory Action for **22VAC40-295, Temporary Assistance for Needy Families (TANF)**, which was published in 30:21 VA.R. 2501 June 16, 2014.

Agency Contact: Bridget Shelmet, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7144, FAX (804) 726-7357, or email bridget.shelmet@dss.virginia.gov.

VA.R. Doc. No. R14-4065; Filed December 11, 2015, 11:46 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-130).**

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

Public Hearing Information:

January 21, 2016 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228.

Public Comment Deadline: January 08, 2016.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) update the date reference to the federal list of endangered and threatened wildlife species; (ii) update the Virginia List of Endangered and Threatened Species to add the little brown bat and the tri-colored bat as endangered species and remove the state-threatened upland sandpiper and Dismal Swamp southeastern shrew to reflect their status in Virginia more accurately; and (iii) describe certain activities in which incidental take of the little brown bat and the tri-colored bat may occur that may be conducted without a permit from the department, provided that the activities are performed in certain manners.

4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended as of ~~May 20, 2014~~ October 2, 2015, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to § 29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A of this section, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, sickle	Percina willliamsi
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum

Threatened:

Salamander, Mabee's	Ambystoma mabeei
Treefrog, barking	Hyla gratiosa

3. Reptiles:

Endangered:

Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia reticularia

Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

4. Birds:

Endangered:

Plover, Wilson's	Charadrius wilsonia
Rail, black	Laterallus jamaicensis
Wren, Bewick's	Thryomanes bewickii bewickii

Threatened:

Falcon, peregrine	Falco peregrinus
~~Sandpiper, upland~~	~~Bartramia longicauda~~
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica

5. Mammals:

Endangered:

Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Bat, little brown	Myotis lucifugus
Bat, tri-colored	Perimyotis subflavus
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus

~~Threatened:~~

~~Shrew, Dismal Swamp southeastern~~	~~Sorex longirostris fisheri~~

6. Molluscs:

Endangered:

Ghostsnail, thankless	Holsingeria unthanksensis
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio	Pleurobema cordatum
Pigtoe, pyramid	Pleurobema rubrum
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fontigens morrisoni
Supercoil, spirit	Paravitrea hera

Threatened:

Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pigtoe, Atlantic	Fusconaiamasoni
Pimpleback	Quadrula pustulosa pustulosa

Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

8. Crustaceans:

Endangered:

Crayfish, Big Sandy	Cambarus veteranus

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

D. The incidental take of certain species may occur in certain circumstances and with the implementation of certain conservation practices as described in this subsection:

Species	Location	Allowable Circumstances	Required Conservation Measures	Expected Incidental Take
Little brown bat Tri-colored bat	Statewide	Human health risk – need for removal of individual animals from human-habited structures.	Between May 15 and August 31, no exclusion of bats from maternity colonies, except for human health concerns. DGIF-permitted nuisance wildlife control operator with DGIF-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	Little to no direct lethal taking expected.
		Public safety or property damage risk – need for tree removal, application of prescribed fire, or other land management actions affecting known roosts; removal of animals from known roosts.	Hibernacula: no tree removal, use of prescribed fire, or other land management action within buffer area from September 1 through April 30, if possible. Otherwise, document the need (public safety, property damage risk) for tree removal during this period and verify that no known roost trees exist in the buffer area. Known roost trees: no tree removal, use of prescribed fire, or other land management action within buffer area from May 1 through August 31, if	Little to no direct lethal taking expected.

			possible. Otherwise, document public safety or property damage risk. DGIF-permitted nuisance wildlife control operator with DGIF-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-20)

List of Native and Naturalized Fauna of Virginia, March 2012, Virginia Department of Game and Inland Fisheries

Federal Endangered and Threatened Species List, amended as of October 2, 2015, U.S. Fish & Wildlife Service

VA.R. Doc. No. R16-4615; Filed December 21, 2015, 10:29 a.m.

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-40).**

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

Effective Dates: January 1, 2016, through January 30, 2016.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The emergency amendment changes the dates of part of the open oyster harvest season for the James River Area and the Thomas Rock Area (James River) from March 1, 2016, through March 31, 2016, to January 1, 2016, through January 31, 2016.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in the following subdivisions of this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2015, through April 30, 2016.

2. Milford Haven: December 1, 2015, through February 29, 2016.

3. Rappahannock River Area 9: November 1, 2015, through December 31, 2015.

4. Little Wicomico River: October 1, 2015, through December 31, 2015.

5. Coan River: October 1, 2015, through December 31, 2015.

6. Yeocomico River: October 1, 2015, through December 31, 2015.

7. Nomini Creek: October 1, 2015, through December 31, 2015.

8. Mobjack Bay Area: January 1, 2016, through January 31, 2016.

9. Rappahannock River Rotation Area 5: October 1, 2015, through November 30, 2015.

10. Rappahannock River Rotation Area 3: November 1, 2015, through December 31, 2015.

11. Great Wicomico River Area: December 1, 2015, through January 31, 2016.

12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, 2015, through January 31, 2016.

13. James River Area and the Thomas Rock Area (James River): November 1 2015, through December 31, 2015, and ~~March~~ January 1, 2016, through ~~March~~ January 31, 2016.

14. Pocomoke and Tangier Sounds Rotation Area 1: December 1, 2015, through February 29, 2016.

15. Pocomoke Sound Area - Public Ground 10: November 2, 2015, through November 13, 2015.

16. Pocomoke Sound Area - Public Ground 9: November 16, 2015, through November 27, 2015.

17. Deep Rock Area: December 1, 2015, through February 29, 2016.

18. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2015, through March 31, 2016.

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in the following subdivisions of this subsection.

1. James River Seed Area: October 1, 2015, through May 31, 2016.

2. Deep Water Shoal State Replenishment Seed Area: October 1, 2015, through May 31, 2016.

VA.R. Doc. No. R16-4613; Filed December 22, 2015, 8:43 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Proposed Regulation

Title of Regulation: **6VAC20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations (amending 6VAC20-30-20, 6VAC20-30-30, 6VAC20-30-80; repealing 6VAC20-30-110, 6VAC20-30-120, 6VAC20-30-130).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 11, 2016.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

Basis: The Department of Criminal Justice Services, under direction of the Criminal Justice Services Board, has the authority to review, amend, or revise regulations relating to in-service training standards as found in § 9.1-102 of the Code of Virginia. The Criminal Justice Services Board approved recommendations for 6VAC20-30-80 A on June 12, 2014, and approved recommendations relating to 6VAC20-30-30 and 6VAC20-30-80 B specific to corrections officers employed by the Department of Corrections on December 11, 2014.

Purpose: The amended regulation will add an additional three courses of fire for criminal justice academies to choose from when offering annual firearms in-service qualification. This action will also remove the firearms courses and replace them with the web address of the document where the firearms courses can be located. There is a forum for public comment and oversight through the Criminal Justice Service Board's committees. Any changes to the training requirements are first reviewed and vetted by a Curriculum Review Committee (CRC). The CRC then makes a recommendation to the Committee on Training (COT), which is the policymaking body responsible to the board for approving revisions to the training standards. Prior to approving changes to training requirements the COT must hold a public hearing, and 60 days prior to the public hearing, the proposed changes shall be distributed to all affected parties for the opportunity to comment.

The amended regulation will reflect the compulsory in-service training standards for corrections officers approved by the Criminal Justice Services Board. This action will also remove outdated compulsory in-service standards for corrections officers.

The proposed amendments are essential to protect the safety and welfare of citizens, and officers themselves, by ensuring criminal justice officers are receiving the most up-to-date training and to ensure corrections officers receive the training necessary to protect the health, safety, and welfare of inmates housed in Virginia Correctional Institutions, as well as that of the corrections officers.

Substance: Amendments to 6VAC20-30-80 A and B remove the courses of fire and instead direct constituents to the document where the firearms courses can be located on the department's website.

Amendments to 6VAC20-30-30 A and D remove outdated hours previously required for corrections officers by adding them to subsection A to reflect the same hours required by law enforcement.

Issues: There are no disadvantages to the public with implementing the amended provisions to the regulation. The primary advantages to the public of implementing the amended regulation for compulsory minimum in-service training standards will be that of having public safety officers trained in order to provide protection for the public, as well as the officers themselves.

There are no disadvantages to the agency or the Commonwealth with implementing the amended provision to the regulation. The primary advantages to the agency or the Commonwealth is assuring the most up-to-date training is being regulated in order to hold the public safety officers within the Commonwealth to the highest standards of training for public and officer safety.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to increase the number of annual training hours that correctional officers and sergeants employed in the state prison system must complete from 24 hours to 40 hours. The Board also proposes to remove the lists of firearms qualification courses from this regulation and, instead, direct interested parties to the Department of Criminal Justice Services website to find them.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulatory changes.

Estimated Economic Impact. Currently, correctional officers (prison guards) and sergeants in the correctional system must complete 24 hours of in-service training per year. This training currently includes two hours of cultural diversity training, four hours of legal training and 18 hours of career development/elective training. Board staff reports that they have been working with the Department of Corrections (DOC) to modify these training requirements because DOC believes they are inadequate. The Board now proposes to require correctional officers and sergeants to complete 40 hours of in-service training each year which will bring them in line with the training requirements for law enforcement officers and officers in the correctional system with ranks higher than sergeant (lieutenants through wardens). All of the additional 16 hours of annual training that the Board proposes to require would fall under the category of career development/elective training. Board staff reports that the choice of classes lies with DOC rather than the individual correctional officers/sergeants; presumably, this will allow DOC to tailor classes to address training deficits in their staff.

DOC will incur costs on account of this change because they will have to pay the correctional officers/sergeants for the two additional days each year that they are attending training in addition to paying the salary for other correctional officers/sergeants to cover the shifts that would be missed on account of training. As this change will affect over 6,000 correctional officers and sergeants, the costs to DOC will be considerable. Board staff reports, however, that DOC will not have to hire additional staff to provide current levels of coverage once the proposed requirement becomes effective. Without more information on the problems that DOC hopes to forestall with more training and the efficacy of that training, the Department of Planning and Budget is unable to ascertain whether the benefits for this training will outweigh all costs incurred.

Current regulation includes two lists of firearms training courses that regulated entities may use to complete their firearms qualification; one list is for law enforcement officers, jailors or custodial officers, courtroom security officers and process service officers and the other list is for officers of DOC's Division of Operations. The Board proposes to remove both of these lists from the regulation and substitute notices that a list of the qualification courses can be found on Department of Criminal Justice Services (DCJS) website. Board staff reports that these changes are being proposed to allow the Board to change qualification courses when necessary without going through the regulatory process. Entities that are regulated under these rules, as well as members of the public who might be interested in learning what firearms training may be used by officers to qualify to carry a firearm as a part of their job, will incur search costs and possible confusion because they will not have all information provided in the regulation but will have to go and search DCJS website instead. The Board might partially alleviate any confusion caused by providing a link in this regulation to the actual documents in question rather than to the DCJS website home page. In any case, there is insufficient information to know whether the benefits that may accrue to the Board and the public from being able to quickly change these courses will outweigh the costs incurred by affected regulated entities and the public because they will have to search for information that is currently provided in the regulation.

Businesses and Entities Affected. Board staff reports that 38 prisons, and the approximately 6,000 correctional officers and sergeants that they employ, will be affected by the proposed increase in compulsory annual training. All entities that must complete firearms training under this regulation, as well as interested members of the public, will likely be affected by the firearms qualification courses being removed from the regulatory text and listed instead in a document on the Department of Criminal Justice Services website.

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

Projected Impact on Employment. Board staff reports that DOC will not have to hire additional staff to implement training requirements that will likely add over 100,000 training hours for correctional officers and sergeants. Assuming this, these proposed regulatory changes are unlikely to have any impact on employment in the Commonwealth.

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

Small Businesses: Costs and Other Effects. No small businesses will likely be affected by this proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses will likely be affected by this proposed regulation.

Real Estate Development Costs. Real estate development costs are unlikely to be affected by this proposed regulation.

Agency's Response to Economic Impact Analysis: The Rules Relating to Compulsory In-Service Training Standards for

Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations as currently drafted requires Department of Corrections (DOC) employees to participate in a given number of hours of in-service training based on rank. Correctional officers and sergeants are required to complete 24 hours of in-service training while officers with a rank of lieutenant through the warden are required to complete 40 hours of in-service training. All correctional officers, regardless of rank, are responsible for the care and custody of inmates and the safety and security of the facility. The proposed revisions to the regulation standardizes the required training hours to ensure all correctional officers receive a sufficient number of hours of in-service training to maintain and enhance their skills.

Summary:

The proposed amendments (i) increase the number of annual training hours that correctional officers and sergeants employed in the state prison system must complete from 24 hours to 40 hours and (ii) remove the lists of firearms qualification courses from the regulation and, instead, direct interested parties to a document of approved courses on the Department of Criminal Justice Services website.

6VAC20-30-20. Applicability.

A. Every person employed as a law-enforcement officer, as defined by § 9.1-101 of the Code of Virginia, shall meet compulsory in-service training standards as set forth in 6VAC20-30-30 A.

B. Every person employed as a jailor or custodial officer under the provisions of Title 53.1 of the Code of Virginia shall meet compulsory in-service training standards as set forth in 6VAC20-30-30 B.

C. Every person employed as a courtroom security or process service officer under the provisions of Title 53.1 of the Code of Virginia shall meet compulsory in-service training standards as set forth in 6VAC20-30-30 C.

D. Every person employed as an officer of the Department of Corrections, Division of Operations as defined herein shall meet compulsory in-service training standards as set forth in 6VAC20-30-30 ~~D~~ A.

6VAC20-30-30. Compulsory in-service training standards.

Pursuant to the provisions of subdivisions ~~(1), (3), (5), (6) and (7)~~ 1, 3, 4, 5, 7, 8, and 9 of § 9.1-102 of the Code of Virginia, the board establishes the following as the compulsory in-service training standards for law-enforcement officers, jailors or custodial officers, courtroom security officers, process service officers and officers of the Department of Corrections, Division of Operations.

A. Law-enforcement officers and corrections officers... TOTAL 40 Hours

1. Cultural diversity training... 2 Hours

2. Legal training... 4 Hours

Subjects to be provided are at the discretion of the academy director of a certified training academy and shall be designated as legal training.

3. Career development/elective training... 34 Hours

~~(May include subjects provided in subsections B and C of this section.)~~

a. Subjects to be provided are at the discretion of the academy director of a certified training academy. ~~No more than eight hours of firearms training shall be approved as elective subjects. Firearms training shall be applied as follows:~~

~~(1)~~ b. No more than four hours may be applied to firearms qualification as provided in 6VAC20-30-80~~; and~~.

~~(2) Remaining hours eligible for situational or decision-making training.~~

B. Jailors or custodial officers... TOTAL 24 Hours

1. Cultural diversity training... 2 Hours

2. Legal training... 4 Hours

Subjects to be provided are at the discretion of the academy director of a certified training academy and shall be designated as legal training.

3. Career development/elective training... 18 Hours

~~(May include subjects provided in subsections A and C of this section.)~~

a. Subjects to be provided are at the discretion of the academy director of a certified training academy. ~~No more than eight hours of firearms training shall be approved as elective subjects. Firearms training shall be applied as follows:~~

~~(1)~~ b. No more than four hours may be applied to firearms qualification as provided in 6VAC20-30-80~~; and~~.

~~(2) Remaining hours eligible for situational or decision-making training.~~

C. Courtroom security officers and process service officers... TOTAL 16 Hours

1. Cultural diversity training... 2 Hours

2. Legal training... 4 Hours

Subjects to be provided are at the discretion of the academy director of a certified training academy and shall be designated as legal training.

3. Career development/elective training... 10 Hours

~~(May include subjects provided in subsections A and B of this section.)~~

a. Subjects to be provided are at the discretion of the academy director of a certified training academy. ~~No more than eight hours of firearms training shall be~~

approved as elective subjects. Firearms training shall be applied as follows:

(1) b. No more than four hours may be applied to firearms qualification as provided in 6VAC20-30-80; and.

(2) Remaining hours eligible for situational and/or decision making training.

D. Officers of the Department of Corrections, Division of Operations.

Total Hours for Correctional Officers and Sergeants... 24 Hours

Total Hours for Lieutenants through Wardens... 40 Hours

1. Cultural diversity training... 2 Hours

2. Legal training... 4 Hours

The subjects to be provided are at the discretion of the Director of the Department of Corrections or his designee and shall be designated as legal training.

3. Career development/elective training.

Correctional officers and sergeants... 18 Hours

Lieutenants through wardens... 34 Hours

a. Subjects to be provided are at the discretion of the Director of the Department of Corrections, or his designee. No more than eight hours of firearms training shall be approved as elective subjects. Firearms training shall be applied as follows:

(1) No more than four hours applied to firearms qualification as provided in 6VAC20-30-80; and

(2) Remaining hours eligible for situational or decision making training.

6VAC20-30-80. Firearms training.

A. Every criminal justice officer required to carry a firearm in the performance of duty shall qualify annually using the applicable firearms course approved by the Committee on Training of the board. The list of approved courses is identified under the performance outcomes for weapons and firearms training in the Virginia Criminal Justice Services Training Manual and Compulsory Minimum Training Standards available on the Department of Criminal Justice Services' website at http://www.dcjs.virginia.gov/cple/. Annual range qualification shall include a review of issues/policy relating to weapons safety, nomenclature, maintenance and use of force. With prior approval of the director, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges. No minimum number of hours is required.

A. 1. Law-enforcement officers, jailors or custodial officers, courtroom security officers, and process service officers shall qualify annually with a minimum passing score of 70% on one of the following applicable firearms courses required by subsection A of this section.

1. Virginia Modified Double Action Course for Semi-Automatic Pistols and Revolvers.

2. Virginia Modified Combat Course I.

3. Virginia Modified Combat Course II.

4. Virginia Qualification Course I.

5. Virginia Qualification Course II.

6. Virginia Tactical Qualification Course I.

7. Virginia Tactical Qualification Course II.

B. 2. Officers of the Department of Corrections, Division of Operations shall qualify annually with a minimum passing score of 70% on one of the applicable firearms courses required by subsection A of this section.

Handgun.

Department of Corrections Virginia Modified Double Action Combat Course.

C. Law-enforcement B. Possession of or immediate availability of special weapons by law-enforcement officers, jailors or custodial officers, courtroom security officers, civil process officers and officers of the Department of Corrections, Division of Operations.

Special weapons.

a. 1. All agencies whose personnel possess, or have available for immediate use, shotguns or other similar special weapons, shall design an appropriate qualification weapons program and require all applicable personnel to complete annually.

b. 2. The course, number of rounds to be fired and qualification score shall be determined by the agency or approved training school. Documentation of such qualification programs shall be available for inspection by the director or staff.

6VAC20-30-110. Effective date. (Repealed.)

These rules shall be effective on and after July 1, 1992, and until amended or repealed.

6VAC20-30-120. Adopted. (Repealed.)

This chapter was adopted July 11, 1974.

6VAC20-30-130. Amended. (Repealed.)

This chapter was amended:

January 1, 1988

May 3, 1989

April 1, 1992

VA.R. Doc. No. R15-4108; Filed December 10, 2015, 3:47 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

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

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

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

Effective Date: February 10, 2016.

Agency Contact: Dr. Susan Clair, Director, Adult Education and Literacy, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 786-3347, or email susan.clair@doe.virginia.gov.

Summary:

Chapters 454 and 642 of the 2012 Acts of Assembly eliminate the general achievement diploma by folding it into the adult high school diploma, which is renamed the general achievement adult high school diploma. The amendments (i) provide that only students who are not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia may be enrolled in an adult high school program and awarded a general achievement adult high school diploma and (ii) set forth the education, training, and other requirements to be completed for the general achievement adult high school diploma.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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

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

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

2. Credit.

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

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

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

3. Diplomas.

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

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

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

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

(1) Successfully completes [~~the general educational development (GED) program that meets the requirements of the Board of Education's Regulations Governing General Educational Development Certificates (8VAC20-360) and earns a GED certificate~~ a high school equivalency examination approved by the Board of Education];

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

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

Discipline Area	Standard Units of Credit Required
English	4
Mathematics	3
Science	2
History and Social Sciences	2
Electives	9
TOTAL	20

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

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

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

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-30)

~~National External Diploma Program Generalized Competencies Correlated with CASAS Competencies, Comprehensive Adult Student Assessment System EDP/CASAS, 1996.~~

National External Diploma Program Competencies, version 5.0, January 2013, a CASAS program, as promulgated by the American Council on Education and validated and endorsed by the U.S. Department of Education

VA.R. Doc. No. R13-3303; Filed December 18, 2015, 9:52 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-60. Hazardous Air Pollutant Sources (amending 9VAC5-60-60, 9VAC5-60-90).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 112 of the Clean Air Act; 40 CFR Parts 61 and 63.

Effective Date: February 10, 2016.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments update state regulations that incorporate by reference certain U.S. Environmental Protection Agency regulations to reflect the Code of Federal Regulations as published on July 1, 2015. No new NESHAPs or MACTs are being incorporated. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

Part II
Emission Standards

Article 1
Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in

40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2014)~~ (2015) in effect July 1, ~~2014~~ 2015. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

Article 2

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2014)~~ (2015) in effect July 1, ~~2014~~ 2015. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

VA.R. Doc. No. R16-4494; Filed December 11, 2015, 1:51 p.m.

STATE WATER CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC25-220. Surface Water Management Area Regulation (amending 9VAC25-220-10, 9VAC25-220-40, 9VAC25-220-60, 9VAC25-220-70, 9VAC25-220-80).**

Statutory Authority: § 62.1-249 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 10, 2016.

Effective Date: February 25, 2016.

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) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Basis: The State Water Control Board is authorized by § 62.1-44.15 of the Code of Virginia to adopt regulations to enforce the general water quality management programs of the Commonwealth. Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia provides details concerning requirements for surface water management areas.

Purpose: Citations within the regulation are being updated to reflect current state statute. Updating the citations reduces confusion concerning the requirements that are to be met. Changes are also being made to the regulation to make it consistent with state statute. Reflecting current state statute is necessary for the regulation to appropriately provide a mechanism to protect beneficial uses of the Commonwealth's water resources during periods of drought thereby protecting the health, safety, or welfare of citizens.

Rationale for Using Fast-Track Process: This rulemaking is expected to be noncontroversial since the only changes being proposed are ones that update outdated citations with current statutory citations or make the regulation consistent with state statute.

Substance: Citations referencing sections of state statute are being updated with current citations. The regulation is also being revised to be consistent with state statute.

Issues: The primary advantages to the public, agency, and Commonwealth will be that the regulation will reference current versions of state statute and will be consistent with state statute. This will avoid confusion concerning the requirements the regulated community should comply with. There are no disadvantages to the public, agency, or Commonwealth associated with these regulatory revisions.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to update statutory references contained within the regulation and to amend language for consistency with the Code of Virginia.

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

Estimated Economic Impact. The proposed updating of statutory references has no impact on the law, but will provide a small benefit in that it will aid the reader in finding the current applicable law. The proposed amending of language for consistency with the Code of Virginia has no impact on applicable law since when there is any conflict between regulation and statute, the statute applies. This proposed change will provide a small benefit in that it will reduce potential confusion concerning the applicable law for the reader.

Businesses and Entities Affected. The proposed amendments provide the small benefit of improved clarity of the law for interested parties. Any person or entity could potentially be interested. Environmental groups and firms and other entities that may be required to get surface water withdrawal permits or surface water withdrawal certificates would likely be among the interested parties.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments do not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not significantly affect small businesses.

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

Adverse Impacts:

Businesses: The proposed amendments will not adversely affect businesses.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments will not adversely affect other entities.

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

Summary:

The amendments update statutory references contained within the regulation and update language for consistency with the Code of Virginia.

Part I
General

9VAC25-220-10. Definitions.

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

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board.

"Existing beneficial consumptive user" means a person who is currently withdrawing water from a stream for a beneficial use and not returning that water to the stream near the point from which it was taken.

"Investor-owned water company" means a water supplier owned by private investors which operates independently of the local government and is regulated by the Department of Health.

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Serious harm" means man induced reduction to the flow of a surface water resource that results in impairment of one or more beneficial uses.

"Surface water" means any water in the Commonwealth, except groundwater as defined in § 62.1-255 of the Code of Virginia.

"Surface water management area" means a geographically defined surface water area in which the board deemed the levels or supply of surface water to be potentially adverse to public welfare, health, and safety.

"Surface ~~Water Withdrawal Certificate"~~ water withdrawal certificate" means a document issued by the board as found in subsection D of § 62.1-243 of the Code of Virginia.

"Surface water withdrawal permit" means a document issued by the board evidencing the right to withdraw surface water.

~~"Surface water management area" means a geographically defined surface water area in which the board deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.~~

~~"Surface water" means any water in the Commonwealth, except groundwater as defined in § 62.1-44.85 of the Code of Virginia.~~

"Water conservation program" means a program incorporating measures or practices which will result in the alteration of water uses resulting in reduction of water losses as contemplated by subsection B of § 62.1-243 of the Code of Virginia.

"Water management program" means a program incorporating measures or practices which will result in the alteration of water uses resulting in reduction of water losses as contemplated by subsection C of § 62.1-243 of the Code of Virginia.

9VAC25-220-40. Initiate surface water management area proceeding.

A. The board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the

surface water management area in question, or any state agency, may initiate a surface water management area proceeding whenever in its judgment there is evidence to indicate that:

1. A stream has substantial instream values as indicated by evidence of fishery, recreation, habitat, cultural or aesthetic properties;

2. Historical records or current conditions indicate that a low flow condition could occur which would threaten important instream uses; and

3. Current or potential offstream uses contribute to or are likely to exacerbate natural low flow conditions to the detriment of instream values.

B. If the board finds that the conditions required in subsection A of ~~9VAC25-220-40~~ this section exist and further finds that the public welfare, health and safety require that regulatory efforts be initiated, the board shall, by regulation, declare the area in question to be a surface water management area.

C. In its proceeding to declare an area to be a surface water management area, the board shall, by regulation, determine when the level of flow is such that permit conditions in a surface water management area are in force. This flow level will be determined for each regulation establishing a surface water management area and included in it.

D. The board shall include in its decision a definition of the boundaries of the surface water management area.

E. The regulations may provide that the board, or the board executive director may by order, declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

F. The board shall follow its Public Participation Guidelines ~~(9VAC25-10-10 et seq.)~~ (9VAC25-11) for all hearings contemplated under this section. If after a public hearing held pursuant to § ~~9-6.14:7.1~~ 2.2-4007.01 of the Virginia Administrative Process Act, or at the request of an affected person or on the board motion, a hearing shall be held under § ~~9-6.14:8~~ 2.2-4009 of the Virginia Administrative Process Act.

9VAC25-220-60. Agreements.

A. The board shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area.

B. When the board finds that any such agreement, executed in writing and filed with the board, is consistent with the intent, purposes and requirements of this chapter, the board shall approve the agreement following a public hearing.

C. The board shall provide at least 60 days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement~~,~~ and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. The board shall be a party to the agreement.

D. The agreement, until terminated, shall control in lieu of a formal order, rule, regulation, or permit issued by the board under the provisions of this chapter~~,~~ and shall be deemed to be a case decision under the Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia). Permits issued in accordance with this chapter shall incorporate the terms of this agreement.

E. Any agreement shall specify the amount of water affected by it.

F. Any agreement approved by the board may include conditions ~~which~~ that can result in its amendment or termination by the board, following a public hearing if the board finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions include the following:

1. A determination by the board that the agreement originally approved by the board will not further the purposes of this chapter;

2. A determination by the board that circumstances have changed such that the agreement originally approved by the board will no longer further the purposes of this chapter; or

3. One or more parties to the agreement is not fulfilling its commitments under the agreement.

The board shall provide at least 60 days' notice of the public hearing to the public and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement~~,~~ and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

Part II
Permit Requirements, Application and Issuance

9VAC25-220-70. Application for a permit.

A. Duty to apply. Any person who withdraws surface water or proposes to withdraw surface water in a surface water management area must have a surface water withdrawal permit, except persons excluded under subsection B of this section or exempted under subsection C of this section, or withdrawals made pursuant to a voluntary agreement approved by the board pursuant to 9VAC25-220-60. A complete application shall be submitted to the board in accordance with this section.

B. Exclusions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law:

1. Any nonconsumptive use;

2. Any water withdrawal of less than 300,000 gallons in any single month;

3. Any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps;

4. Any withdrawal in any area which has not been declared a surface water management area; and

~~4.~~ 5. Any withdrawal from a wastewater treatment system permitted by the State Water Control Board or the Department of Mines, Minerals and Energy.

C. Exemptions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law. However, the following do require a surface water withdrawal certificate containing details of a board approved water conservation or management plan as found in subdivision 2 of 9VAC25-220-100 and Part V (9VAC25-220-250 et seq.) of this chapter. It is not the intent or purpose of this certification program to affect the withdrawal of water approved by the board.

1. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

c. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a water management area are in force pursuant to subsection G of 9VAC25-220-80 and 9VAC25-220-190, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the board may require release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment. Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by this subdivision only at the option of that political subdivision or investor-owned water company.

2. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989; and

b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawals; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

D. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 180 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Owners or persons who have effective permits shall submit a new application 180 days prior to any proposed modification to their activity which will:

a. Result in a significantly new or substantially increased water withdrawal; or

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

E. Complete application required.

1. Any person proposing to withdraw water shall submit a complete application and secure a permit prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.

2. Any person reapplying to withdraw water shall submit a complete application.

3. A complete surface water withdrawal permit application to the State Water Control Board shall, as a minimum, consist of the following:

a. The location of the water withdrawal, including the name of the waterbody from which the withdrawal is being made;

b. The average daily withdrawal, the maximum proposed withdrawal, and any variations of the withdrawal by season including amounts and times of the day or year during which withdrawals may occur;

c. The use for the withdrawal, including the importance of the need for this use;

d. Any alternative water supplies or water storage; and

e. If it is determined that special studies are needed to develop a proper instream flow requirement, then additional information may be necessary.

4. Where an application is considered incomplete, 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.

5. Any person proposing to withdraw water shall submit an application for a permit 180 days prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.

6. Any person with an existing unpermitted water withdrawal operation shall submit an application immediately upon discovery by the owner or within 30 days upon being requested to by the board whichever comes first.

F. Informational requirements. All applicants for a surface water withdrawal permit shall provide all such information consistent with this chapter as the board deems necessary. All applicants for a permit must submit a complete permit application in accordance with subsection A of this section.

9VAC25-220-80. Conditions applicable to all 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 surface water withdrawal permit holder of the duty to comply with all applicable federal and state statutes, regulations, standards and prohibitions. Any permit noncompliance is a violation of the law, and is grounds for enforcement action, permit suspension, cancellation, revocation, modification or denial of a permit renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to (i) avoid all adverse environmental impact which could result from the activity, (ii) where avoidance is impractical, minimize the adverse environmental impact, and (iii) where impacts cannot be avoided, provide mitigation of the adverse impact on an in-kind basis.

C. Permit action.

1. A permit may be modified, revoked, suspended, cancelled, reissued, or terminated as set forth in this chapter.

2. If a permittee files a request for permit modification, suspension or cancellation, 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. This provision shall not be used to extend the expiration date of the effective permit.

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

D. Inspection and entry. Upon presentation of credentials and upon consent of the owner or custodian, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter 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.

E. Duty to provide information. The permittee shall furnish to the board, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, reissuing, suspending and cancelling 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. This information shall be furnished to the board pursuant to § 62.1-244 of the Code of Virginia.

F. Monitoring and records requirements.

1. Monitoring shall be conducted according to approved methods as specified in the permit or as approved by the board.

2. 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:

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

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

c. The date the measurements were compiled;

d. The name of the individuals who compiled the measurements;

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

f. The results of such techniques or methods.

G. Permit conditions become applicable.

1. Permit conditions become applicable in a surface water management area upon notice by the board to each permittee by mail, by electronic or postal delivery, or cause notice of that to be published in a newspaper of general circulation throughout the area.

2. The board shall notify each permittee by mail or cause notice of that to be published in a newspaper of general circulation throughout the surface water management area when the declaration of water shortage is rescinded.

VA.R. Doc. No. R16-4218; Filed December 17, 2015, 11:26 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-510. Guidelines for General Assembly Nursing Scholarships (amending 12VAC5-510-20, 12VAC5-510-30, 12VAC5-510-40, 12VAC5-510-50, 12VAC5-510-60; adding 12VAC5-510-5, 12VAC5-510-15, 12VAC5-510-80, 12VAC5-510-85, 12VAC5-510-90, 12VAC5-510-100, 12VAC5-510-110; repealing 12VAC5-510-10, 12VAC5-510-70).**

Statutory Authority: § 32.1-122.6:01 of the Code of Virginia.

Effective Date: February 12, 2016.

Agency Contact: Karen Reed, Office of Minority Health and Health Equity, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7427, FAX (804) 864-7440, or email karen.reed@vdh.virginia.gov.

Summary:

The amendments (i) set the conditions for granting a scholarship, including that for each $2,000 of scholarship money received, the nursing program scholarship recipient shall (a) agree to engage in the equivalent of one year of full-time nursing practice in a region with a critical shortage of nurses and (b) notify the department, within 180 days of being awarded a nursing degree, of the type of nursing practice to be performed and the employer's contact information and (ii) set the terms of repayment if conditions are not met. In addition, the amendments add elements of the contract signed by the scholarship recipient and change the definition of full-time employment from 40 hours per week to 32 or more hours per week to be consistent with industry standards.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 510
[~~GUIDELINES~~ REGULATIONS] FOR GENERAL ASSEMBLY NURSING SCHOLARSHIPS

~~This chapter has been prepared to familiarize scholarship applicants, Deans/Directors of nursing programs, and Financial Aid Officers with the General Assembly Nursing Scholarship Program. The legislative authority for the scholarships in addition to the actual steps involved in the application process are reviewed.~~

~~Do not hesitate to contact the Office of Public Health Nursing, Virginia State Health Department, 1500 East Main Street, Suite 227, Richmond, VA 23219, with any questions relating to the scholarship program. The phone number at the Bureau office is (804) 371-4090.~~

~~ALL SCHOLARSHIPS ARE AWARDED WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN.~~

[12VAC5-510-5. Definitions.

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

"Approved nurse education program" means an approved educational program pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

"Board" or "Board of Health" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Continuous" means no breaks in service greater than a period of six weeks.

"Department" means the Virginia Department of Health.

"Full-time" means at least 32 hours per week for 45 weeks per year.

"Interest" means the legal rate of interest pursuant to § 6.2-302 of the Code of Virginia.

"Licensed practical nurse" or "LPN" means a person who is licensed or holds a multistate licensure privilege under the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice practical nursing, as defined in § 54.1-3000 of the Code of Virginia.

"Penalty" means twice the amount of all monetary payments to the scholarship participant, less any service obligation completed.

"Recipient" or "participant" means an eligible LPN or RN of an approved nurse education program who enters into a contract with the commissioner and participates in the scholarship program.

"Registered nurse" or "RN" means a person who is licensed or holds a multistate licensure privilege under the provisions Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing, as defined in § 54.1-3000 of the Code of Virginia.]

12VAC5-510-10. [~~Legislative authority.~~ (Repealed.)

~~Section 32.1-122.6:01 of the Code of Virginia provides the Board of Health the authority to award certain nursing scholarships and loan repayment funds. Fee requirements are specified in § 54.1-3011.1 of the Code of Virginia. Section 54.1-3011.2 of the Code of Virginia establishes the nursing scholarship and loan repayment fund.~~

~~Sections 23-35.9 through 23-35.13 of the Code of Virginia authorize annual nursing scholarships for students enrolled in undergraduate and graduate nursing programs. Undergraduate nursing programs are defined as those leading to an associate degree, diploma, or baccalaureate degree in nursing. Graduate nursing programs are those offering masters and doctoral degrees.~~]

~~Under the law, all~~ [~~All~~ scholarship awards are made by an Advisory Committee appointed by the State Board of Health. The Advisory Committee consists of eight members: four deans or directors of schools of nursing ~~or their designees~~, two former scholarship recipients, and two members with experience in the administration of student financial aid programs. Committee appointments are for two-year terms and members may not serve for more than two successive terms ~~in addition to the portion of any unexpired term for which such a member was appointed. The State Board of Health shall schedule appointments to the Advisory Committee in such a manner that at least two persons who have not served during the previous two years are appointed to the Committee~~.

~~The~~] ~~Office of Public Health Nursing of the State Health~~ [~~Department of Health~~ serves as the staff element to the ~~Advisory Committee and plays no role in the determination of scholarship recipients.~~

~~The~~] ~~basis for determining scholarship recipients is established by the~~ [~~Advisory Committee shall make the awards~~ with due regard given to scholastic attainment, ~~financial need, character, and adaptability to the nursing profession. With due consideration of the number of applications and the qualifications of all such applicants, the Advisory Committee will, so far as practical, award an equal number of scholarships among the various congressional districts within the Commonwealth.~~]

12VAC5-510-15. [~~Definitions.~~ Advisory Committee.]

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

~~"Board" or "Board of Health" means the State Board of Health.~~

~~"Commissioner" means the State Health Commissioner.~~

~~"Continuous" means that there are no breaks in service greater than a period of six weeks.~~

~~"Department" means the Virginia Department of Health.~~

~~"Full-time" means the equivalent of 32 or more hours per week for at least 45 weeks per year.~~

~~"Interest" means the legal rate of interest pursuant to the Code of Virginia.~~

~~"Licensed Practical Nurse" or "LPN" means a nurse who has successfully completed a state-approved practical nursing program, passed a licensing examination known as the NCLEX-PN, and is licensed by the Commonwealth of Virginia to provide routine care under the supervision of a licensed medical practitioner, a professional registered nurse, or other licensed health professional authorized by regulations of the Board of Nursing.~~

~~"Penalty" means the amount of money equal to twice the amount of all monetary payments to the scholarship recipient, less any service obligation completed.~~

~~"Practice" means the provision of direct patient care as an LPN or RN in a region of the Commonwealth of Virginia with a critical shortage of nurses.~~

~~"Recipient" means a student in an LPN or RN program who enters into a contract with the Board of Health and participates in the scholarship program.~~

~~"Registered Nurse" or "RN" means a nurse who has graduated from an approved nursing program, passed the national licensing examination known as the NCLEX-RN, and has been licensed to practice as a registered nurse by the Board of Nursing in the Commonwealth of Virginia.~~

All scholarship awards shall be made by an Advisory Committee appointed pursuant to § 23-35.9 of the Code of Virginia.]

12VAC5-510-20. Eligibility.

In order to be considered for a General Assembly Nursing Scholarship, [~~applicants must meet the following criteria~~ an applicant shall]:

1. [Be a United States citizen, a United States national, or a qualified alien pursuant to 8 USC § 1621;

2.] Be ~~a resident of the State of Virginia for at least one year~~ [~~eligible for in-state tuition pursuant to § 23-7.4 of the Code of Virginia at the time a scholarship is awarded.~~ [a bona fide resident of Virginia by being domiciled in the Commonwealth for at least one year as defined by § 23-7.4 of the Code of Virginia;]

[~~2.~~ 3.] Be accepted [for enrollment] or enrolled in [~~a school of nursing~~ an approved nurse education program] in the ~~State~~ Commonwealth of Virginia [~~which is approved by the~~] ~~State~~ [~~Board of Nursing.~~] ~~The only exception is for students pursuing graduate degrees not offered in the Commonwealth.~~ [preparing him for examination for licensure as a practical nurse or a registered nurse;]

[~~3.~~ 4.] If already enrolled in [~~a nursing~~ an approved nurse education] program [in the Commonwealth of Virginia],

the applicant must demonstrate a cumulative grade point average of at least 2.5 [~~.~~ in core nursing classes;]

[~~4.~~ 5.] Submit a completed application form and appropriate grade transcript [~~to the~~] ~~Office of Public Health Nursing~~ [~~department~~] prior to the [established ~~published~~] deadline dates [~~.~~ :]

[~~5.~~ 6.] Demonstrate financial need [,] which is verified by the [~~Financial Aid Officer/authorized person~~ school's financial aid officer or authorized person as part of the application process; and

7. Not have an active military obligation.]

~~FAILURE TO COMPLY WITH ALL OF THESE CRITERIA WILL CAUSE THE APPLICANT TO BE INELIGIBLE FOR A SCHOLARSHIP.~~

[~~Failure to comply with all of these criteria will cause the applicant to~~ An applicant who fails to meet all of these requirements shall] be ineligible for a scholarship.

12VAC5-510-30. Conditions of scholarships.

~~It is important that all applicants fully understand the conditions of acceptance of a General Assembly Nursing Scholarship. These awards are not outright gifts. For each $100 of scholarship money received, the~~ [~~The scholarship recipient agrees to engage in a term of service involving continuous full time~~] ~~(40 hours per week)~~ [~~nursing practice in a region of the Commonwealth~~] ~~for one month~~ [~~with a critical shortage of nurses.~~] ~~Therefore, if a student receives $500 in scholarship awards, they must repay that amount by working continuously for 5 months. Full time employment~~ [~~The maximum award amounts and terms of service are determined as per §§ 23-35.9 and 23-35.11 of the Code of Virginia. Employment must begin within~~] ~~60~~ [~~180 days of the recipient's graduation date. Time spent in an "on call" status shall not be counted toward the number of hours worked per week. Voluntary military service, even if stationed in Virginia, cannot be used to repay~~] ~~scholarship awards~~ [~~the service obligation. If the recipient begins employment at a practice site, but that employment is later terminated, the recipient must transfer to another approved practice site in the Commonwealth within 90 days of termination.~~]

~~If a scholarship recipient fails to complete their studies, or engage in full time nursing practice in Virginia, the full amount of money represented in the scholarship(s) received, plus an annual interest charge, must be refunded.~~

~~If a recipient leaves the State, or ceases to engage in full time nursing practice before all employment conditions of the scholarship award are fulfilled, the recipient must repay the balance on his/her account plus an annual interest charge.~~

~~All refund checks should be made payable to the Commonwealth of Virginia and mailed to:~~

~~Office of Public Health Nursing~~

~~State Health Department~~

~~1500 East Main Street~~

~~Suite 227~~

~~Richmond, Virginia 23219~~

~~Before any scholarship is awarded, the applicant must sign a written contract agreeing to the terms established by law and the Advisory Committee.~~

[A. Prior to becoming a participant in the General Assembly Nursing Scholarship program, the applicant shall enter into a contract with the commissioner agreeing to the terms and conditions upon which the scholarship is granted.

B. For each $2,000 of scholarship money received, the participant agrees to engage in the equivalent of one year of full-time nursing practice in a region with a critical shortage of nurses in the Commonwealth. The recipient shall notify the department, within 180 days of being awarded a nursing diploma or degree, of the type of nursing practice to be performed and give the name and address of the employer for approval. Voluntary military service, even if stationed in Virginia, cannot be used to repay the service obligation required when a scholarship is awarded.

The participant may request approval of a change of practice site. Such requests shall be made in writing. The department in its discretion may approve such a request.

C. If a participant fails to complete his studies, the full amount of the scholarships or scholarships received, plus the applicable interest charge, shall be repaid. A recipient may terminate a contract while enrolled in school after notice to the board and upon repayment within 90 days of the entire amount of the scholarship plus interest.

D. If upon graduation a participant leaves the Commonwealth or fails to engage or ceases to engage in nursing practice in a region with a critical shortage of nurses in the Commonwealth before all employment conditions of the scholarship award are fulfilled, the participant shall repay the award amount reduced by the proportion of obligated years served plus the applicable interest and penalty.

E. All default payments shall be made payable to the Commonwealth of Virginia.]

12VAC5-510-40. Number of applications per student.

Scholarships [~~are~~ shall be] awarded for single academic years. However, the same student may, after demonstrating satisfactory progress in ~~his/her~~ his studies, [which is demonstrated by a cumulative grade point average of 2.5 in core nursing classes,] apply for and receive scholarship awards for [~~any~~ a] succeeding academic year or years. No student [~~may~~ shall] receive scholarships for more than a total of ~~five~~ four years.

12VAC5-510-50. Amounts of scholarships.

The [~~amount~~ number] of [~~each scholarship award is~~ scholarships awarded shall be] dependent upon the amount of money appropriated by the General Assembly [, the amount of the funds available within the Nursing Scholarship and

Loan Repayment Fund administered by the Board of Nursing pursuant to § 54.1-3011.2 of the Code of Virginia,] and the number of qualified applicants. [~~No~~ Each] recipient ~~will~~ shall receive an award [~~for~~ of] ~~less than one hundred and fifty dollars~~ [~~$150~~ $2,000 per year]. [~~Graduate nursing scholarships may not exceed four thousand dollars annually.~~]

12VAC5-510-60. How to apply.

[~~Applications and~~] ~~Guidelines are available from the Dean/Director of your school or from the Financial Aid Office~~ [~~guidelines are made available to all prospective students online through the department's website~~].

~~If a student is pursuing a graduate degree not available in Virginia, applications may be obtained directly from the Office of Public Health Nursing, State Health Department, 1500 East Main Street, Suite 227, Richmond, VA 23219.~~

[Eligible applicants shall submit a complete application made available by the department on the department's website. A complete application shall include documentation of all eligibility requirements. The deadline for submission of the application shall be announced by the department on the department's website.]

12VAC5-510-70. [~~Deadline dates.~~ (Repealed.)]

[~~Applications will not be accepted~~] ~~in the Office of Public Health Nursing more than 6 months in advance of the following deadline dates:~~ [~~by the department outside of the application cycle.~~]

~~March 15 for students already enrolled in schools of nursing.~~

~~June 15 for new students entering nursing programs.~~

~~APPLICATIONS AND/OR TRANSCRIPTS RECEIVED AFTER 5:00 PM ON THE ABOVE DATES WILL NOT BE CONSIDERED FOR SCHOLARSHIP AWARDS.~~

[~~Applications and transcripts received after the published deadline date and time for the application cycle will not be considered for scholarship awards.~~]

~~FLOW CHART OF RESPONSIBILITIES~~

~~D Dean or Director~~
~~FAO Financial Aid Officer~~
~~S R Student Recipient~~

~~RESPONSIBILITY~~	~~D~~	~~FAO~~	~~S R~~
~~Distribute applications & Guidelines to those students who otherwise could not provide sufficient funds for themselves while in school.~~	~~X~~	~~X~~	
~~Maintain supply of current scholarship applications and guidelines. Notify the Office of Public Health Nursing when applications are needed.~~	~~X~~		
~~Make certain all parts of the application are completed, including the Financial Aid Officer/Authorized Person and Dean/Director signatures.~~	-		~~X~~
~~Be certain that a current transcript of grades (high school, or college if now attending) is sent to the Office of Public Health Nursing when applying for a scholarship (original and repeat requests) before deadline dates.~~			~~X~~
~~Review entire Section V Financial Data of application. Review whatever school records are accessible to determine the individual applicant's assets and expenditures.~~		~~X~~	
~~Recommend amount of scholarship to be awarded. Should there be a conflict between the student's request and the Financial Aid Officer's/Authorized Person's opinion of the amount that is needed, an explanation should be included.~~		~~X~~	
~~Review the completed application form before affixing the signature thereby indicating:~~	~~X~~		
~~A. The applicant has properly completed the application form.~~			
~~B. The Financial Aid Officer has verified proof of need.~~			
~~C. The applicant's entrance and graduation dates are correct.~~			
~~D. The school of nursing is recommending the applicant for a scholarship based upon potential nursing ability.~~			
~~Furnish whatever pertinent data that would be helpful to the scholarship committee when making the awards.~~	~~X~~	~~X~~	~~X~~

~~Forward the completed and signed application to the Office of Public Health Nursing before deadline dates.~~			~~X~~
~~Submit a transcript of grades to the Office of Public Health Nursing at the end of each grading period during scholarship year.~~			~~X~~
~~Notify the Office of Public Health Nursing when student recipient fails, transfers or withdraws from the school.~~	~~X~~		~~X~~
~~Notify the Office of Public Health Nursing when student recipient graduation date is changed.~~	~~X~~		~~X~~
~~Notify the Office of Public Health Nursing when there is a change in recipient's name and/or address~~			~~X~~
~~Upon graduation, notify the Office of Public Health Nursing of plans for employment and beginning date of employment.~~			~~X~~
~~Submit verification of employment to Office of Public Health Nursing at least every 6 months until work obligation is fulfilled.~~			~~X~~

12VAC5-510-80. Scholarship contract.

Applicants selected to receive scholarship awards by the Advisory Committee [~~must~~ shall] sign and return a written contract to the department by the specified deadline date. Failure to return the contract by the specified deadline date may result in the award being rescinded. At minimum, the scholarship contract shall include the following elements:

1. [~~Agreement with the~~ The] total amount of the award and the award period [~~:~~;]

2. Agreement to pursue an LPN or RN degree in nursing at a school of nursing in the Commonwealth of Virginia that is approved by the Board of Nursing [~~:~~;]

3. Agreement to begin continuous full-time employment [in a region with a critical shortage of nurses in the Commonwealth] within 180 days of the recipient's graduation [~~:~~;]

4. Agreement to comply with all reporting requirements [~~:~~;]

5. Agreement [~~with~~ to] the terms of service requiring continuous full-time nursing practice in the Commonwealth for a specified period of time and the terms and conditions associated with a breach of contract [~~:~~;

6. Signature of the applicant;

7. Signature of the commissioner or his designee; and

8. Other provisions as the commissioner may deem appropriate.]

[~~A recipient may terminate a contract while enrolled in school after notice to the board and upon repayment within 90 days of the entire amount of the scholarship plus interest.~~]

[12VAC5-510-85. Practice site selection.

Each recipient shall perform his service obligation in a region of the Commonwealth with a critical shortage of nurses. A recipient shall perform his service obligation at a practice site in either a health professional shortage area or a medically underserved area. Maps of health professional shortage areas and medically underserved areas shall be available on the department's website.]

12VAC5-510-90. Reporting requirements.

[~~Monitoring of the service obligation of recipients shall be conducted on an ongoing basis by the department.~~

~~The recipient shall permit the nursing school to provide information regarding enrollment status and progress in the program.~~

~~The recipient shall notify the department, within 180 days of being awarded a nursing diploma or degree, of the type of nursing practice to be performed and give the name and address of the employer for approval.~~

~~The recipient shall submit to the department verification of employment documentation every four months until the contract obligation has been completely fulfilled.~~

~~The recipient shall maintain practice records in a manner that will allow the department to readily determine compliance with the terms and conditions of the contract.~~

Each participant shall provide information as required by the department to verify compliance with all requirements of the nursing scholarship program (e.g., verification of employment by submitting a verification of employment form once every six months).]

The recipient shall notify the department in writing within 30 days [~~of~~ if] any of the following events occur:

1. Recipient changes name;

2. Recipient changes address;

3. Recipient changes nursing program;

4. Recipient changes practice site [(a recipient is required to request in writing and obtain prior approval of changes in practice site)];

5. Recipient no longer intends [or is unable] to fulfill service obligation as a nurse in the Commonwealth; [~~or~~]

6. Recipient ceases to practice as an RN or LPN [; or

7. Recipient ceases or no longer intends to complete his nursing program].

12VAC5-510-100. Breach of contract.

The following [~~are the conditions that~~ may] constitute a breach of contract:

1. The recipient fails to complete his nursing studies [~~.~~;]

2. The recipient fails to begin or complete the term of obligated service [~~within~~ under] the [~~time frames as specified in~~ terms and conditions of] the scholarship contract [~~.~~;]

3. The recipient falsifies or misrepresents information on the program application, the verification of employment forms, or other required documents [~~.~~; or

4. The recipient's employment is terminated for good cause as determined by the employer and confirmed by the department. If employment is terminated for reasons beyond the participant's control (e.g., closure of site), the participant shall transfer to another site approved by the board in the Commonwealth within six months of termination. Failure of the participant to transfer to another site shall be deemed to be a breach of the contract.]

In the event of a breach of contract [~~where the recipient fails to begin or complete the term of obligated service within the time frames as specified in the scholarship contract, the recipient shall reimburse the Commonwealth of Virginia for the total amount of the scholarship, plus penalty and interest~~ and in accordance with the terms of the contract, the recipient shall make default payments as described in 12VAC5-510-30]. In the event of a breach of contract where the recipient has partially fulfilled [~~their~~ his] obligation, the total amount of reimbursement shall be prorated by the proportion of obligation completed.

12VAC5-510-110. Deferment and waivers.

[A.] The requirement for continuous engagement in full-time nursing practice may be deferred by the board if the scholarship recipient requests a deferment to pursue [~~a more advanced degree in nursing or a nursing related field~~ an undergraduate or graduate degree in nursing or related to nursing activities]. This deferment, if granted, shall not relieve the recipient of the responsibility to complete the remaining portion of the obligation upon completion of the [~~advanced nursing~~] degree.

[B.] If the [~~recipient~~ participant] is in default due to death or permanent disability [~~, the obligation to reimburse the Commonwealth of Virginia for the total amount of the scholarship award plus interest may be partially or completely waived by the board upon application of the recipient or the recipient's estate to the board~~ so as not to be able to engage in nursing practice in a region with a critical shortage of nurses in the Commonwealth, the participant or his personal representative may be relieved of his obligation under the contract to engage in nursing practice upon repayment of the total amount of scholarship received plus applicable interest. For participants completing part of the nursing obligation prior to becoming permanently disabled or in the event of death, the total amount of scholarship funds owed shall be reduced by the proportion of obligated years served. The obligation to make restitution may be waived by the board upon application of the participant or the participant's personal representative to the board].

[~~Other individual situations involving severe hardship may be considered by the board for deferment of the service obligation or partial or total waiver of the repayment obligation. Deferment and waiver requests will not be permitted as a matter of course, but may be allowed in the most compelling cases.~~

C. Individual cases may be considered by the board for a variance of payment or service, pursuant to § 32.1-12 of the Code of Virginia, if the board finds compliance with the applicable service requirements or default repayment would pose an undue hardship on the recipient.

D.] All requests for deferments, waivers, or variances [~~must~~ shall] be submitted in writing to the department for consideration and final disposition by the [~~Advisory Committee or 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 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 (12VAC5-510)

Verification of Employment for Mary Marshall Nursing Scholarship Program & Virginia Nurse Educator Scholarship Program (rev. 6/2015)

VA.R. Doc. No. R11-2804; Filed December 17, 2015, 5:45 p.m.

Final Regulation

Title of Regulation: **12VAC5-620. Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells (amending 12VAC5-620-10, 12VAC5-620-30, 12VAC5-620-40, 12VAC5-620-50, 12VAC5-620-70, 12VAC5-620-80, 12VAC5-620-90, 12VAC5-620-100; adding 12VAC5-620-75; repealing 12VAC5-620-20).**

Statutory Authority: §§ 32.1-12, 32.1-164, and 32.1-176.4 of the Code of Virginia.

Effective Date: February 12, 2016.

Agency Contact: Jim Bowles, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7475, or email jim.bowles@vdh.virginia.gov.

Summary:

The amendments (i) clarify that an application fee is required for an alternative discharging sewage system; (ii) clarify that an application fee is required for a letter certifying that a site is suitable for installation of an onsite sewage disposal system; (iii) clarify the application fee for closed-loop geothermal well systems; (iv) establish fees for various applications; (v) provide authority to waive the application fee where beneficial to public health and safety; and (vi) clarify that an applicant may not receive a refund for denial of an application if the applicant is actively pursuing an administrative appeal of the denial.

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 620
REGULATIONS GOVERNING ~~APPLICATION~~ FEES ~~FOR CONSTRUCTION PERMITS~~ FOR ONSITE SEWAGE DISPOSAL SYSTEMS, ALTERNATIVE DISCHARGE SYSTEMS, AND PRIVATE WELLS

Part I
Definitions

12VAC5-620-10. Definitions.

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

"Agent" means a legally authorized representative of the owner.

"Alternative discharging system" means any device or system that results in a point source discharge of treated sewage for which the board may issue a permit authorizing construction and operation when the system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Board" means the State Board of Health.

"Certification letter" means a letter issued by the commissioner in lieu of a construction permit, which identifies a specific site and recognizes the appropriateness of the site for an onsite wastewater disposal system.

"Commissioner" means the State Health Commissioner.

"Construction of private wells" means acts necessary to construct private wells, including the location of private wells, the boring, digging, drilling, or otherwise excavating a well hole and installing casing with or without well screens, or well curbing.

["Decommission" means to permanently seal an existing private well in accordance with the requirements of the Private Well Regulations (12VAC5-630).]

"Department" means the Virginia Department of Health.

"Dewatering well" means a driven well constructed for the sole purpose of lowering the water table and kept in operation for a period of 60 days or less. Dewatering wells are used to allow construction in areas where a high water table hinders or prohibits construction and are always temporary in nature.

"Family" means the economic unit which shall include the owner, the spouse of the owner, and any other person actually and properly dependent upon or contributing to the family's income for subsistence. A husband and wife who have been separated and are not living together, and who are not dependent on each other for support, shall be considered separate family units. The family unit, which is based on cohabitation, is considered to be a separate family unit for determining if an application fee ~~is waiverable~~ may be waived. The ~~cohabitating~~ cohabiting partners and any children shall be considered a family unit.

"Fee schedule" means a listing by item of the fees to be charged by the department for processing applications and for other services rendered by the department.

"Income" means total cash receipts of the family before taxes from all sources. These include money wages and salaries before any deductions, but do not include food or rent in lieu of wages. These receipts include net receipts from nonfarm or farm self-employment (e.g., receipts from the family's own business or farm after deductions for business or farm expenses.) They include regular payments from public assistance (including Supplemental Security Income), social security or railroad retirement, unemployment and worker's compensation, strike benefits from union funds, veterans' benefits, training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payment; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. These receipts further include funds obtained through college work study programs, scholarships, and grants to the extent said funds are used for current living costs. Income does not include the value of food stamps, WIC checks, fuel assistance, money borrowed, tax refunds, gifts, lump sum settlements, inheritances or insurance payments, withdrawal of bank deposits, earnings of minor children, money received from the sale of property. Income also does not include funds derived from college work study programs, scholarships, loans, or grants to the extent such funds are not used for current living costs.

"Minor modification of an existing sewage disposal system" means an alteration that is not a repair [, voluntary upgrade,] or routine maintenance, does not result in an increase in treatment level or volume of the system, and does not require evaluation of the soil conditions prior to issuance of a permit. Minor modifications include but are not limited to relocation of a system component or an additional plumbing connection

to the system that does not increase the actual or estimated flow of the system.

"Onsite sewage disposal system" means a sewerage system or treatment works designed not to result in a point source discharge.

"Owner" means any person who owns, leases, or proposes to own or lease a private well ~~or,~~ an onsite sewage disposal system, or ~~both~~ an alternative discharging system.

"Person" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system, treatment works or private well.

"Principal place of residence" means the dwelling unit, single family dwelling, or mobile home where the owner lives.

"Private well" means any water well constructed for a person on land which is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, use as an observation or monitoring well, or other nonpublic water well. A dewatering well, for the purposes of this chapter, is not a private well.

~~"Repair of a failing onsite sewage disposal system" means the construction of an onsite sewage disposal system or parts thereof to correct an existing and failing sewage disposal system for an occupied structure with indoor plumbing.~~

"Repair" means the construction or replacement of all or parts of a sewage disposal system or private well to correct a failing, damaged, or improperly functioning system or well when such construction or replacement is required by the board's regulations.

"Replacement of a private well" means the construction of a private well to be used in lieu of an existing private well.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Sewage" means water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

"Voluntary upgrade" means [~~a change to or replacement of an existing nonfailing onsite or alternative discharging sewage disposal system, without an increase in the permitted volume or strength of the sewage, in accordance with the regulations for repairing failing systems~~ an improvement to an existing onsite sewage disposal system or alternative discharging system that (i) is not required for compliance with any law or regulation and (ii) results in no net increase in the permitted volume or strength of sewage dispersed by the system].

"Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be artificially drawn; provided this definition shall not include wells drilled for the purpose of exploration or production of oil or gas, for building foundation investigation and construction, elevator shafts, grounding of electrical apparatus, or the modification or development of springs.

[Part II
General Information]

12VAC5-620-20. ~~Authority for regulations.~~ (Repealed.)

~~Sections 32.1-164#C and 32.1-176.4#B of the Code of Virginia provide that the State Board of Health has the power to prescribe a reasonable fee to be charged for filing an application for an onsite sewage disposal system permit and a reasonable fee to be charged for filing an application for a private well construction permit.~~

[~~Part II~~
~~General Information~~]

12VAC5-620-30. Purpose of regulations.

The board has promulgated these regulations to:

1. ~~Establish a fee for filing an application for a permit to construct an onsite sewage disposal system or for the construction of a private well; and~~ Establish a procedure for determining the fees for services provided by the department for onsite sewage systems, alternative discharge systems, and private wells;

~~2. Establish a procedure for the waiver of fees for an owner whose income of his family is at or below the federal poverty guidelines established by the United States Department of Health and Human Services, or when the application is for a pit privy, the replacement of a private well, or the repair of a failing onsite sewage disposal system.~~

2. Establish procedures for the refund of fees; and

3. Establish procedures for the waiver of fees.

12VAC5-620-40. Compliance with the Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et. seq. of the Code of Virginia) shall govern the promulgation and administration of these regulations and shall ~~be applicable to the appeal of any case decision based upon~~ govern the decisions of cases under this chapter.

12VAC5-620-50. Powers and procedures of regulations not exclusive.

The ~~Commissioner~~ commissioner may enforce these regulations through any means lawfully available.

Part III
Fees

12VAC5-620-70. ~~Application~~ Establishing fees.

~~A. A fee of $50 shall be charged to the owner for filing an application for an onsite sewage disposal system permit with the department. The fee shall be paid to the Virginia Department of Health by the owner or his agent at the time of filing the application and the application shall not be processed until the fee has been collected. Applications shall be limited to one site specific proposal. When site conditions change, or the needs of an applicant change, or the applicant proposes and requests another site be evaluated, and a new site evaluation is conducted, a new application and fee is required.~~

~~B. A fee of $25 shall be charged to the owner for filing an application for the construction of a private well with the department. The fee shall be paid to the Virginia Department of Health by the owner or his agent at the time of filing the application and the application shall not be processed until the fee has been collected. Applications shall be limited to one site specific proposal. When site conditions change, or the needs of an applicant change or the applicant proposes and requests another site be evaluated, and a new site evaluation is conducted, a new application and fee is required.~~

~~C. A person seeking revalidation of a construction permit for an onsite sewage disposal system shall file a completed application and shall pay a fee of $50.~~

~~D. A person seeking revalidation of a permit for the construction of a private well shall file a completed application and shall pay a fee of $25.~~

A. The commissioner shall establish a schedule of fees to be charged by the department for services related to construction, maintenance, and repair or replacement of onsite sewage disposal systems, alternative discharge systems, and private wells and for appeals before the Review Board.

B. In establishing fees, the commissioner shall consider the actual or estimated average cost to the agency of delivering each service included in the schedule of fees.

[~~C. The fees shall be the maximum allowable fees as established by the Code of Virginia or the appropriation act except that the fee for an application for a permit to make minor modifications of existing systems shall be 50% of the application fee for an onsite sewage disposal system construction permit.~~ The following fee schedule is hereby established:

SCHEDULE OF FEES	
Application or Service	Fee
Certification letter, no onsite soil evaluator/professional engineer (OSE/PE) documentation (no charge for well)	$350
Certification letter with OSE/PE documentation, ≤1,000 gpd	$320
Certification letter with OSE/PE documentation, >1,000 gpd	$1,400
Construction permit for treatment works only, no OSE/PE documentation	$425
Combined well and treatment works construction permit, no OSE/PE documentation	$725
Combined well and treatment works construction permit with OSE/PE documentation, ≤1,000 gpd	$525
Construction permit for treatment works only with OSE/PE documentation, ≤1,000 gpd	$225
Construction permit for treatment works only with OSE/PE documentation, >1,000 gpd	$1,400
Combined well and treatment works construction permit with OSE/PE documentation, >1,000 gpd	$1,700
Private well construction or abandonment permit, with or without OSE/PE documentation	$300
Closed-loop geothermal well system (one fee per well system)	$300
Alternative discharge system inspection fee	$75
Minor modification to an existing system	$100
Appeal before the Review Board	$135]

[~~D. The fee for filing an application for an administrative hearing before the Review Board shall be $135.~~]

12VAC5-620-75. Fee remittance; application completeness.

A. Each applicant shall remit any required application fee to the department at the time of making application. In any case where an application fee is required, including requests for hearings before the Review Board, the application will be

deemed to be incomplete and will not be accepted or processed until the fee is paid.

[~~B. The owner of a newly installed alternative discharge system shall pay the installation inspection fee prior to the required department inspection.~~

~~C.~~ B.] The owner of an alternative discharge system shall pay the monitoring fee to the department for monitoring inspections conducted by the department that are mandated by 12VAC5-640. The department shall waive the monitoring fee when it conducts a monitoring inspection that is not mandated by 12VAC5-640.

12VAC5-620-80. Waiver of fees.

A. An owner whose ~~income of his~~ family income is at or below the ~~1988~~ 2013 Poverty Income Guidelines ~~For All~~ for the 48 Contiguous States ~~(Except Alaska and Hawaii)~~ and ~~The~~ the District of Columbia established by the Department of Health and Human Services, ~~53 FR 4213 (1988)~~ 78 FR 5182 (January 24, 2013), or any successor guidelines, shall not be charged a fee ~~for filing an application for an onsite sewage disposal system permit or a private well construction permit~~ pursuant to this chapter.

B. Any person applying for a permit to construct a pit privy shall not be charged a fee for filing the application.

C. Any person applying for a permit ~~to construct an onsite sewage disposal system~~ to repair ~~a failing~~ an onsite sewage disposal system or alternative discharging system shall not be charged a fee for filing the application.

D. Any person applying for a construction permit for the replacement of a private well ~~shall not~~ may be charged a fee for filing the application. Any application fee paid for a construction permit for a replacement well shall be refunded in full upon receipt by the department of a Uniform Water Well Completion Report, pursuant to 12VAC5-630-310, indicating that the well that was replaced has been permanently and properly abandoned or decommissioned.

E. Any person applying for a permit to properly and permanently abandon or decommission an existing well on property that is his [~~principle~~ principal] place of residence shall not be charged a fee for filing the application.

F. Any person who applies to renew a construction permit for an onsite sewage disposal system, alternative discharge system, or private well shall not be charged a fee for filing the application, provided that:

1. The site and soil conditions upon which the permit was issued have not changed;

2. The legal ownership of the property has not changed;

3. A building permit for the facility to be served by the sewage system or well has been obtained or construction of the facility has commenced;

4. No previous renewal of the permit has been granted; [~~and~~]

5. The expiration date of the renewed permit shall be the date 18 months following the expiration date of the original permit [; and

6. Where the construction permit is for an alternative discharging system, the permit must comply with 9VAC25-110, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day, issued by the State Water Control Board].

G. Any person whose application for a [certification letter or for a] permit to construct an onsite sewage disposal system, alternative discharging system, or private well is denied may file one subsequent application for the same site-specific construction permit for which the application fee shall be waived, provided that:

1. The subsequent application is filed within 90 days of receiving the notice of denial for the first application;

2. The denial is not currently under appeal; and

3. The application fee for the first application has not been refunded.

12VAC5-620-90. Refunds of application fee.

~~An application fee shall be refunded to the owner (or agent, if applicable) if the department denies a permit on his land on which the owner seeks to construct his principal place of residence. Such fee shall not be refunded by the department until final resolution of any appeals made by the owner from the denial.~~

A. An applicant for a construction permit or certification letter whose application is denied may apply for a refund of the application fee. The application fee shall be refunded to the owner or agent, if applicable, if the department denies an application for the land upon which the owner intends to build his principal place of residence. When the application was made for both a sewage disposal system and a private well, both fees may be refunded at the owner's request. [Any such request shall be considered a withdrawal of the application.]

B. An applicant for a construction permit or a certification letter may request a refund of the application fee if the applicant voluntarily withdraws his application before the department issues the requested permit. The application fee will be refunded if the application is withdrawn before the department makes a site visit for the purpose of evaluating the application.

C. An applicant who has paid an application fee for a replacement well shall be refunded the application fee in full upon receipt by the department of a Uniform Water Well Completion Report, pursuant to 12VAC5-630-310, showing that the well that was replaced has been properly and permanently abandoned or decommissioned.

D. All applications for refunds must be made to the department no later than 12 months following the date upon which the applicant receives notification that his application

for a construction permit or certification letter has been denied, within 12 months following the date upon which his application was withdrawn, or within 12 months following the date upon which any appeals of the denial of the application have been concluded.

E. All applications for refunds shall be made in writing in a form approved by the department.

F. [~~Denials of applications may be appealed only when the applicant has a currently active application before the department, including payment of any required application fee.~~ Applications that have been withdrawn are not subject to appeal.]

12VAC5-620-100. Determining eligibility for waiver based on family income.

A. An owner seeking a waiver of an application fee shall request the waiver on the application form. The department will require information as to income, family size, financial status and other related data. The department shall not process the application until final resolution of the eligibility determination for waiver.

B. It is the owner's responsibility to furnish the department with the correct financial data in order to be appropriately classified according to income level and to determine eligibility for a waiver of an application fee. The owner shall be required to provide written verification of [any employment or nonemployment] income such as check stubs, written letter from an employer, W-2 forms, [~~etc.,~~ or other documentation acceptable to the department] in order to provide documentation for the application.

C. The proof of income must reflect current income ~~which~~ that is expected to be available during the next 12-month period. Proof of income must include~~: Name~~ [, where applicable,] name of employer, amount of gross earnings, and pay period for stated earnings. If no pay stub is submitted, a written statement must include the name, address, telephone number, and title of person certifying the income.

VA.R. Doc. No. R11-2718; Filed December 17, 2015, 5:43 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Extension of Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-25).

12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-201, 12VAC30-70-321; adding 12VAC30-70-415, 12VAC30-70-417).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-21).

12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-850, 12VAC30-130-890).

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

Expiration Date Extended Through: July 1, 2016.

The Governor has approved the Department of Medical Assistance Services' request to extend the expiration date of the above-referenced emergency regulations for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulations will continue in effect through July 1, 2016. The emergency regulations relate to reimbursement of residential treatment centers and freestanding psychiatric hopsitals separately from the normal per-diem rate for "services provided under arrangement" (including professional, pharmacy, and other services) furnished to Medicaid members and were published in 30:20 VA.R. 2470-2481 June 2, 2014.

Agency Contact: Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R14-3714; Filed December 17, 2015, 5:32 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-221, 12VAC30-70-251, 12VAC30-70-420).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 10, 2016.

Effective Date: February 25, 2016.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of 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. DMAS is relying on the general

authority of § 32.1-325 for the authority to remove the 1,000-day threshold to exempt hospitals from filing cost reports.

Purpose: The purpose of this action is to replace the existing diagnosis-related group (DRG) classification system for inpatient hospital services. The current methodology is unsustainable given the implementation of the International Classification of Disease (ICD), version 10, effective October 1, 2015. The purpose is also to improve the accuracy of pricing and reimbursement by capturing differences in severity of illness among patients receiving inpatient hospital services.

This action also updates reimbursement for non-cost-reporting hospitals removing the 1,000 days threshold as a requirement to exempt non-cost-reporting hospitals from filing cost reports.

The amendments do not impact the public or citizens of the Commonwealth.

Rationale for Using Fast-Track Process: This regulatory change is being promulgated through the fast-track rulemaking process because it is expected to be noncontroversial. DMAS consulted with the Virginia Hospital and Healthcare Association (VHHA) and the affected providers and considered the advice of the Hospital Payment Policy Advisory Committee. VHHA actively participated in the development of the new methodology and indicated that it would not object to the new methodology. The affected providers are satisfied with the new DRG classification system; therefore, no opposition is expected as a result of this fast-track regulatory action.

Removing the 1,000-day threshold for determining whether a hospital is required to file a cost report is expected to be well received by providers, so no objections are expected.

Substance: Based on authority under Item 301 VVV of Chapter 2 of the 2014 Acts of the Assembly, Special Session I, the inpatient hospital operating reimbursement methodology is being amended to replace the all patient diagnosis-related group (AP-DRG) with a more refined grouper stratifying the severity of illness. This change was originally scheduled for July 1, 2014, but was delayed due to the budget uncertainty.

The AP-DRG methodology in effect prior to October 1, 2014, assigned DRGs based on the diagnosis and procedure codes submitted on inpatient hospital claims excluding inpatient acute psychiatric and rehabilitation hospital services. With the implementation of International Classification of Diseases, edition 10 (ICD-10), the current AP-DRG classification system will no longer be supported by software vendors.

DMAS implemented a new inpatient hospital claim classification system capable of processing ICD-10 claims effective October 1, 2014. The APR-DRG Classification System developed by 3M uses discharge information to classify patients into clinically meaningful groups; the patients grouped into each DRG are similar in terms of both clinical characteristics and the hospital resources they consume. Being a more refined grouper, APR-DRG uses four severity of illness (SOI) levels to create more specific groupings.

The 3M APR-DRG software improves the accuracy of pricing and reimbursement by capturing differences in severity of illness among patients. While the primary goal of transitioning to APR-DRG is to improve the accuracy of pricing and reimbursement, the current AP-DRG software will not be updated for ICD-10 diagnosis codes while the APR-DRG software will be. By implementing now, providers will have a year of experience with APR-DRG using ICD-9 diagnoses before the transition to ICD-10 diagnoses effective for dates of discharge on or after October 1, 2015.

DMAS is transitioning to APR-DRG by blending AP-DRG and APR-DRG weights over a three-year period. Operating rates were developed based on the blend of the current AP-DRG weights and the new APR-DRG weights. Using a three-year transition period, the weights will be based on the following blend of AP-DRG and APR-DRG weights:

• SFY 2015 – 50% APR-DRG and 50% AP-DRG

• SFY 2016 – 75% APR-DRG and 25% AP-DRG

• SFY 2017 – 100% APR-DRG (Full Implementation)

This action is estimated to be budget neutral in the aggregate. Individual facility payments may increase or decrease under the new methodology; however, the new payment methodology is not expected to increase inpatient hospital operating payments for hospitals in the aggregate.

DMAS is removing the 1,000-day threshold for exempting non-cost-reporting hospitals from filing cost reports. Non-cost-reporting hospitals will be reimbursed the in-state average DRG rates.

Issues: These actions change the reimbursement methodology for inpatient hospital services. The primary advantage for hospitals is the availability of commercial software to support implementation of the ICD-10 as federally required. There are no disadvantages to the hospitals by this change of the APR-DRG methodology. There are also no disadvantages to non-cost-reporting hospitals of the removal of threshold for filing cost reports.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to the 2014 Special Session I Acts of the Assembly, Chapter 2, Item 301 VVV, the Department of Medical Assistance Services (DMAS) proposes to replace the All Patient Diagnosis-Related Group classification system with the All Patient Refined Diagnosis-Related Group system for inpatient hospital operating reimbursement. The proposed payment methodology has been in effect since October 1, 2014.

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

Estimated Economic Impact. Prior to October 1, 2014, Virginia's Medicaid reimbursement methodology for inpatient hospital operating costs was based on the All Patient Diagnosis-Related Group classification system. The Diagnosis Related Groups (DRGs) are a patient classification scheme which provides a means of relating the type of patients a hospital treats (i.e., its case mix) to the costs incurred by the hospital. There are currently three major versions of the DRGs in use in the United States: basic DRGs, All Patient DRGs, and All Patient Refined DRGs. The basic DRGs are used by the Centers for Medicare and Medicaid Services (CMS) for hospital payment for Medicare beneficiaries. The All Patient DRGs (AP-DRGs) are an expansion of the basic DRGs to be more representative of non-Medicare populations such as Medicaid or pediatric patients. The All Patient Refined DRGs (APR-DRG) system expands the AP-DRG structure by adding four levels of severity-of-illness and risk of mortality to create more refined and specific groupings.

The AP-DRG system utilized by Virginia Medicaid prior to October 1, 2014, assigned DRGs to submitted inpatient hospital claims (excluding inpatient acute psychiatric and rehabilitation hospital services) based on the diagnostic and procedure codes defined by the federal International Classification of Disease (ICD) version 9 classification system. However, CMS will implement an updated classification system, ICD-10, on October 1, 2015. With the implementation of the ICD-10 system, the current AP-DRG classification system will no longer be supported by existing software and will not be sustainable. As a result, pursuant to the 2014 Acts of the Assembly, Chapter 2, Item 301 VVV, DMAS implemented the APR-DRG system on October 1, 2014.

According to DMAS, the APR-DRG classification system is compatible with ICD-10 codes which will be implemented in October 2015 as well as ICD-9 codes currently in effect. Thus, the providers are not affected by the proposed new methodology as they will continue to submit the ICD-9 claims until ICD-10 claims go in effect in October 2015. While they will have to purchase new software to process ICD-10 claims in October 2015, those costs will be due to federal changes and cannot be attributed to these proposed changes.

The proposed methodology is beneficial in that it improves the accuracy of pricing and reimbursement by capturing differences in severity of illness and risk of mortality among patients and is compatible with either ICD-9 or ICD-10 claims.

The impact on aggregate reimbursement to all hospitals is estimated to be budget-neutral. In FY 2014, the total Medicaid reimbursement for inpatient hospital operating costs was approximately $401 million. However, the reimbursements to individual hospitals may increase or decrease under the new methodology. Based on FY 2014 data and assuming full implementation, 23 hospitals will receive $100,000 to $530,000 less, 34 hospitals will receive $0 to $99,999 less, 14 hospitals will receive $1 to $99,999 more, and 19 hospitals will receive $100,000 to $2.8 million more in their operating payments compared to payments under the old methodology. Pursuant to legislative mandate, DMAS is transitioning to APR-DRG by blending AP-DRG and APR-DRG weights over a three year period. Using a three-year transition period, the weights will be based on the following blend of AP-DRG and APR-DRG weights: 50% APR-DRG and 50% AP-DRG in FY 2015, 75% APR-DRG and 25% AP-DRG in FY 2016, 100% APR-DRG in FY 2017.

Additionally, APR-DRG specific administrative implementation costs for DMAS are estimated to be $92,000. No significant administrative costs are expected on providers as no billing changes are required for the implementation of the new methodology.

Finally, DMAS also proposes to remove the 1,000 day threshold for exempting non-cost-reporting hospitals from filing cost reports. This change reflects the current DMAS policy and is not expected to have any significant economic impact other than clarifying the current regulations.

Businesses and Entities Affected. The proposed new methodology affects approximately 90 in-state and out-of-state hospitals currently. A few of the affected hospitals may be small and qualify as small businesses. While some of the 7 managed care organizations in Virginia may also change their provider reimbursement methodology for inpatient services following this change, this regulation does not require them to do so.

Localities Particularly Affected. The proposed changes apply throughout the Commonwealth.

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

Effects on the Use and Value of Private Property. The new methodology will reduce reimbursement for 57 hospitals while increasing reimbursement for 33 hospitals. The asset values of the affected hospitals would be affected depending on the impact on their revenues.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Small Businesses:

Definition: Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Only a few of the 90 affected hospitals may be considered as small businesses. The costs and other effects on them would be the same as discussed above.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that would minimize the adverse impact while accomplishing the same goals.

Adverse Impacts:

Businesses: The proposed new payment methodology for inpatient hospital operating costs will reduce reimbursement for 57 hospitals.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The implementation of the proposed new methodology is expected to create an additional $92,000 in DMAS's administrative costs.

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

Summary:

The amendments (i) replace the all patient diagnosis-related group (AP-DRG) classification system with the all patient refined diagnosis-related group (APR-DRG) system for inpatient hospital services in accordance with Item 301 VVV of Chapter 2 of the 2014 Acts of the Assembly, Special Session I, and (ii) update reimbursement for non-cost-reporting hospitals by removing the 1,000 days threshold to qualify for an exemption to filing cost reports.

Article 2

Prospective (DRG-Based) Payment Methodology

12VAC30-70-221. General.

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12VAC30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.

2. As stipulated in 12VAC30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12VAC30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12VAC30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12VAC30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12VAC30-70-281, payments for direct medical education costs of nursing schools and paramedical programs shall be made on an allowable cost basis. For Type Two hospitals, payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of full time equivalent (FTE) interns and residents as reported on the cost report. Effective April 1, 2012, payment for direct GME for interns and residents for Type One hospitals shall be 100% of allowable costs.

7. As stipulated in 12VAC30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12VAC30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"AP-DRG" means all patient diagnosis related groups.

"APR-DRG" means all patient refined diagnosis related groups.

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" means the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" means the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem

cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid utilization rate in excess of 14%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subdivision 2 of this definition does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG" means diagnosis related groups.

"DRG cases" means medical/surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This definition includes all paid Medicaid days (from DMAS MR reports for fee-for-service days and managed care organization or hospital reports for HMO days) and nonpaid/denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits (with appropriate documentation). The definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. It does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric distinct part unit (DPU), divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. The operating cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and includes (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ICD, as defined in 12VAC30-95-5. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A & B (12VAC30-50-95 through 12VAC30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year,

this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" means when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as new cases. Similar diagnoses shall be defined as ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12VAC30-95-5.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD diagnosis codes possessing the same first three digits. As used here, the term "ICD" is defined in 12VAC30-95-5.

"Type One hospitals" means those hospitals that were state-owned teaching hospitals on January 1, 1996.

"Type Two hospitals" means all other hospitals.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper. Effective October 1, 2014, "ungroupable cases" means cases assigned to DRG 955 (ungroupable) and DRG 956 (ungroupable) as determined by the APR-DRG grouper.

D. The All Patient Diagnosis Related Groups (AP-DRG) ~~Grouper~~ grouper shall be used in the DRG payment system. ~~Until notification of a change is given, Version 14.0 of this grouper shall be used.~~ Effective October 1, 2014, DMAS shall replace the AP-DRG grouper with the All Patient Refined Diagnosis Related Groups (APR-DRG) grouper for hospital inpatient reimbursement. The APR-DRG Grouper will produce a DRG as well as a severity level ranging from 1 to 4. DMAS shall phase in the APR-DRG weights by blending in 50% of the full APR-DRG weights with 50% of fiscal year (FY) 2014 AP-DRG weights for each APR-DRG group and severity level in the first year. In the second year, the blend will be 75% of full APR-DRG weights and 25% of the FY 2014 AP-DRG weights. Full APR-DRG weights shall be used in the third year and succeeding years for each APR-DRG group and severity. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology	
Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file
Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI

Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

12VAC30-70-251. Operating payment for transfer cases.

A. The operating payment for transfer cases shall be determined as follows:

1. A transferring hospital shall receive the lesser of (i) a per diem payment equal to the hospital's DRG operating payment for the case, as determined in 12VAC30-70-231, divided by the arithmetic mean length of stay for the DRG into which the case falls times the length of stay for the case at the transferring hospital or (ii) the hospital's full DRG operating payment for the case, as determined in 12VAC30-70-231. The transferring hospital shall be eligible for an outlier operating payment, as specified in 12VAC30-70-261, if applicable criteria are satisfied.

2. The final discharging hospital shall receive the hospital's full DRG operating payment, as determined in 12VAC30-70-231. The final discharging hospital shall be eligible for an outlier operating payment, as specified in 12VAC30-70-261, if applicable criteria are satisfied.

B. Exceptions.

1. Cases falling into DRG 456, 639, or 640 shall not be treated as transfer cases. Effective October 1, 2014, cases falling into DRG 580 and 581 shall not be treated as transfer cases. Both the transferring hospital and the final discharging hospital shall receive the full DRG operating payment.

2. Cases transferred to or from a psychiatric or rehabilitation DPU of a general acute care hospital, a freestanding psychiatric facility licensed as a hospital, or a rehabilitation hospital shall not be treated as transfer cases.

12VAC30-70-420. Reimbursement of noncost-reporting general acute care hospital providers.

A. Effective July 1, 2000, noncost-reporting ~~(general acute care hospitals that are not required to file cost reports)~~ hospitals shall be paid based on the in-state average DRG rates ~~unadjusted for geographic variation~~ increased by the average capital percentage among hospitals filing cost reports in a recent year. ~~General acute care hospitals shall not file cost reports if they have less than 1,000 days per year (in the most recent provider fiscal year) of inpatient utilization by Virginia Medicaid recipients, inclusive of patients in managed care capitation programs.~~

B. Effective July 1, 2011, out-of-state hospitals shall be reimbursed the lesser of the amount reimbursed by the Medicaid program in the facility's home state or the rate defined in the subsection A of this section.

C. Prior approval must be received from DMAS when a referral has been made for treatment to be received from a nonparticipating acute care facility (in-state or out-of-state). Prior approval will be granted for inpatient hospital services provided out of state to a Medicaid recipient who is a resident of the Commonwealth of Virginia under any one of the following conditions. It shall be the responsibility of the nonparticipating hospital, when requesting prior authorization for the admission of the Virginia resident, to demonstrate that one of the following conditions exists in order to obtain authorization. Services provided out of state for circumstances other than these specified reasons shall not be covered.

1. The medical services must be needed because of a medical emergency;

2. Medical services must be needed and the recipient's health would be endangered if he were required to travel to his state of residence;

3. The state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state;

4. It is general practice for recipients in a particular locality to use medical resources in another state.

VA.R. Doc. No. R16-4280; Filed December 11, 2015, 12:15 p.m.

Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).**

12VAC30-120. Waivered Services (amending 12VAC30-120-700, 12VAC30-120-770, 12VAC30-120-900, 12VAC30-120-935, 12VAC30-120-1020, 12VAC30-120-1060).

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

Effective Dates: January 11, 2016, through July 10, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Preamble:

Section 2.2-4011 A of the Code of Virginia states that "[r]egulations that an agency finds are necessitated by an emergency situation may be adopted upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor."

The Department of Medical Assistance Services certifies an emergency exists to the health, safety, and welfare of

Medicaid individuals who are electing to use the consumer-directed model of service delivery but who may not be adequately or appropriately supported by services facilitators. The result is that individuals are not receiving services as ordered in their plans of care; individuals are suffering lapses in necessary services, which places them at risk for abuse, neglect, or exploitation; attendants' hours are not being paid in a timely manner, so they are refusing to show up for work; and persons lacking sufficient training are performing inadequate care. This is affecting individuals in several home and community-based waivers (EDCD, ID, and IFDDS) as well as children receiving personal care services through the EPSDT program.

The emergency amendments will affect the Individual and Family Developmental Disabilities Services (DD), Intellectual Disabilities (ID), and Elderly or Disabled with Consumer Direction (EDCD) waivers as well as personal care services covered under the authority of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program for persons 21 years of age and younger. These changes require services facilitators (SFs) for all persons in the EDCD waiver and require the same qualifications, education, and training for SFs across all three of these waivers. The documented knowledge, skills, and abilities set out in the regulations are the same as are currently required in these waivers' regulations. This regulatory action makes these requirements consistent across all of the waivers that offer consumer-directed personal care services.

The General Assembly also recognized the need to strengthen the qualifications and responsibilities of consumer-directed services facilitators in Item 301 FFF of Chapter 665 of the 2015 Acts of the Assembly.

Current Policy: Individuals enrolled in certain home and community-based waivers or who receive personal care through EPSDT may choose between receiving services through a Medicaid enrolled provider agency or by using the consumer-directed model. Individuals who prefer to receive their personal care services through an agency are the beneficiaries of a number of administrative type functions, the most important of which is the preparation of an individualized service plan (ISP) and the monitoring of those services to ensure quality and appropriateness. This ISP sets out all the services (types, frequency, amount, duration) that the individual requires and that his physician has ordered.

The consumer-directed (CD) model differs from agency-directed services by allowing the Medicaid-enrolled individual to develop his own service plan and self-monitor the quality of those services. To receive CD services, the individual or another designated individual must act as the employer of record (EOR). The EOR hires, trains, and supervises the attendants. A minor child (younger than age 18) is required to have an EOR. Services facilitation is a service that assists the individual (and the individual's family or caregiver, as appropriate) in arranging for, directing, and managing services provided through the consumer-directed model.

Issues: Currently, there is no process to verify that potential or enrolled services facilitators are qualified to perform, or possess the knowledge, skills, and abilities related to, the duties they must fulfill as outlined in current regulations. Consumer-directed services facilitators are not licensed by any governing body, nor do they have any degree or training requirements established in regulation. Other types of Virginia Medicaid-enrolled providers are required by the Commonwealth to have degrees, meet licensing requirements, or demonstrate certifications as precursors to being Medicaid-enrolled providers.

Recommendations: The amendments to the regulations are needed to provide the basis for the Department of Medical Assistance Services to ensure qualified services facilitators are enrolled as service providers and receive reimbursement under the Medicaid waiver programs and through EPSDT. These amendments to the regulations are also needed to ensure that enrolled services facilitator providers employ staff who also meet these qualifications and will ensure that services facilitators have the training and expertise to effectively address the needs of those individuals who are enrolled in home and community-based waivers who direct their own care. Services facilitators are essential to the health, safety, and welfare of this vulnerable population. As part of the process, the department used the participatory approach and has obtained input from stakeholders into the design of the amendments to the regulations.

The regulations are intended to positively impact those choosing to direct their own care under the home and community-based waiver and through EPSDT by ensuring the services facilitators are qualified and can be responsive to the needs of the population.

These changes are intended to be applied across all Medicaid HCBS waivers (IFDDS, EDCD, and ID) and EPSDT in which there is consumer direction of services and the concurrent services facilitation is permitted. The emergency amendments are as follows:

1. If a services facilitator is not a registered nurse, then the services facilitator is required to contact the individual's primary care physician and request consultation;

2. The services facilitator is required to have sufficient knowledge, skills, and abilities (KSAs) to perform his duties (the KSAs are set out in 12VAC30-120-935);

3. The services facilitator is required to have either a college degree or be a registered nurse and have designated amounts of experience supporting individuals with disabilities or older adults;

4. The services facilitator is being required to pass the DMAS-approved training course with a score of at least 80%;

5. The services facilitator is required to have a satisfactory work record. The services facilitator cannot have a prior conviction in his record of having committed barrier crimes as set out in the Code of Virginia, cannot have a founded complaint in the Department of Social Services Central Registry, and cannot be excluded from participating in Medicaid;

6. If the services facilitator fails to conduct his duties, as shown in patient records, then the department will recover expenditures;

7. The services facilitator is being required to have access to a computer with secure Internet access;

8. Functions and tasks that must be performed by the services facilitator are set out; and

9. Required documentation in patients' records is set out.

12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services, and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services. These services in order to be covered (i) shall meet medical necessity criteria based upon diagnoses made by LMHPs who are practicing within the scope of their licenses and (ii) are reflected in provider records and on providers' claims for services by recognized diagnosis codes that support and are consistent with the requested professional services.

a. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" means personal care activities and includes bathing, dressing, transferring, toileting, feeding, and eating.

"Adolescent or child" means the individual receiving the services described in this section. For the purpose of the use of these terms, adolescent means an individual 12-20 years of age; a child means an individual from birth up to 12 years of age.

"Behavioral health services administrator" or "BHSA" means an entity that manages or directs a behavioral health benefits program under contract with DMAS.

"Care coordination" means collaboration and sharing of information among health care providers, who are involved with an individual's health care, to improve the care.

"Certified prescreener" means an employee of the local community services board or behavioral health authority, or its designee, who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

"Clinical experience" means providing direct behavioral health services on a full-time basis or equivalent hours of part-time work to children and adolescents who have diagnoses of mental illness and includes supervised internships, supervised practicums, and supervised field experience for the purpose of Medicaid reimbursement of (i) intensive in-home services, (ii) day treatment for children and adolescents, (iii) community-based residential services for children and adolescents who are younger than 21 years of age (Level A), or (iv) therapeutic behavioral services (Level B). Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience. The equivalency of part-time hours to full-time hours for the purpose of this requirement shall be as established by

DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DMAS" means the Department of Medical Assistance Services and its contractor or contractors.

"Human services field" means the same as the term is defined by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

"Individual service plan" or "ISP" means the same as the term is defined in 12VAC30-50-226.

"Licensed mental health professional" or "LMHP" means a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

"LMHP-resident" or "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling. For purposes of Medicaid reimbursement to their supervisors for services provided by such residents, they shall use the title "Resident" in connection with the applicable profession after their signatures to indicate such status.

"LMHP-resident in psychology" or "LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident in Psychology" after their signatures to indicate such status.

"LMHP-supervisee in social work," "LMHP-supervisee," or "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work. For purposes of Medicaid reimbursement to their supervisors for services provided by supervisees, these persons shall use the title "Supervisee in Social Work" after their signatures to indicate such status.

"Progress notes" means individual-specific documentation that contains the unique differences particular to the individual's circumstances, treatment, and progress that is also signed and contemporaneously dated by the provider's professional staff who have prepared the notes. Individualized and member-specific progress notes are part of the minimum documentation requirements and shall convey the individual's status, staff interventions, and, as appropriate, the individual's progress, or lack of progress, toward goals and objectives in the ISP. The progress notes shall also include, at a minimum, the name of the service rendered, the date of the service rendered, the signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units/hours required to deliver the service. The content of each progress note shall corroborate the time/units billed. Progress notes shall be documented for each service that is billed.

"Psychoeducation" means (i) a specific form of education aimed at helping individuals who have mental illness and their family members or caregivers to access clear and concise information about mental illness and (ii) a way of accessing and learning strategies to deal with mental illness and its effects in order to design effective treatment plans and strategies.

"Psychoeducational activities" means systematic interventions based on supportive and cognitive behavior therapy that emphasizes an individual's and his family's needs and focuses on increasing the individual's and family's knowledge about mental disorders, adjusting to mental illness, communicating and facilitating problem solving and increasing coping skills.

"Qualified mental health professional-child" or "QMHP-C" means the same as the term is defined in 12VAC35-105-20.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-590.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as the term is defined in

12VAC35-105-20 and consistent with the requirements of 12VAC35-105-1370.

"Service-specific provider intake" means the face-to-face interaction in which the provider obtains information from the child or adolescent, and parent or other family member or members, as appropriate, about the child's or adolescent's mental health status. It includes documented history of the severity, intensity, and duration of mental health care problems and issues and shall contain all of the following elements: (i) the presenting issue/reason for referral, (ii) mental health history/hospitalizations, (iii) previous interventions by providers and timeframes and response to treatment, (iv) medical profile, (v) developmental history including history of abuse, if appropriate, (vi) educational/vocational status, (vii) current living situation and family history and relationships, (viii) legal status, (ix) drug and alcohol profile, (x) resources and strengths, (xi) mental status exam and profile, (xii) diagnosis, (xiii) professional summary and clinical formulation, (xiv) recommended care and treatment goals, and (xv) the dated signature of the LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

b. Intensive in-home services (IIH) to children and adolescents under age 21 shall be time-limited interventions provided in the individual's residence and when clinically necessary in community settings. All interventions and the settings of the intervention shall be defined in the Individual Service Plan. All IIH services shall be designed to specifically improve family dynamics, provide modeling, and the clinically necessary interventions that increase functional and therapeutic interpersonal relations between family members in the home. IIH services are designed to promote psychoeducational benefits in the home setting of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from an out-of-home placement due to a documented medical need of the individual. These services provide crisis treatment; individual and family counseling; communication skills (e.g., counseling to assist the individual and his parents or guardians, as appropriate, to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); care coordination with other required services; and 24-hour emergency response.

(1) These services shall be limited annually to 26 weeks. Service authorization shall be required for Medicaid reimbursement prior to the onset of services. Services rendered before the date of authorization shall not be reimbursed.

(2) Service authorization shall be required for services to continue beyond the initial 26 weeks.

(3) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

(4) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

c. Therapeutic day treatment (TDT) shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family counseling.

(1) Service authorization shall be required for Medicaid reimbursement.

(2) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

(3) These services may be rendered only by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

d. Community-based services for children and adolescents under 21 years of age (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical 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 in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual® Criteria or an equivalent standard authorized in advance by DMAS, shall be required for this service.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

(3) Individuals shall be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization shall be required for Medicaid reimbursement. Services that were rendered before the date of service authorization shall not be reimbursed.

(5) Room and board costs shall not be reimbursed. DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(6) These residential providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Behavioral Health and Developmental Services under the Standards for Licensed Children's Residential Facilities (22VAC40-151), Standards for Interim Regulation of Children's Residential Facilities (6VAC35-51), or Regulations for Children's Residential Facilities (12VAC35-46).

(7) Daily progress notes shall document a minimum of seven psychoeducational activities per week. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, stress management, and any care coordination activities.

(8) The facility/group home must coordinate services with other providers. Such care coordination shall be documented in the individual's medical record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

(9) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for intakes and ISPs are set out in 12VAC30-60-61.

(10) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH.

e. Therapeutic behavioral services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical 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 in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual® Criteria, or an equivalent standard authorized in advance by DMAS shall be required for this service.

(2) Authorization is required for Medicaid reimbursement. Services that are rendered before the date of service authorization shall not be reimbursed.

(3) Room and board costs shall not be reimbursed. Facilities that only provide independent living services are not reimbursed. DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(4) These residential providers must be licensed by the Department of Behavioral Health and Developmental Services (DBHDS) under the Regulations for Children's Residential Facilities (12VAC35-46).

(5) Daily progress notes shall document that a minimum of seven psychoeducational activities per week occurs. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The individual must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals shall be discharged from this service when other less intensive services may achieve stabilization.

(8) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services that are based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for intakes and ISPs are set out in 12VAC30-60-61.

(9) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH.

(10) The facility/group home shall coordinate necessary services with other providers. Documentation of this care coordination shall be maintained by the facility/group home in the individual's record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of Amount, Duration and Scope of Selected Services.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

8. Services facilitators shall be required for all consumer-directed personal care services consistent with the requirements set out in 12VAC30-120-935.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's individualized education program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services.

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. The licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation)

that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with intellectual disability prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

Part VIII
Individual and Family Developmental Disabilities Support Waiver

Article 1
General Requirements

12VAC30-120-700. Definitions.

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

"Activities of daily living" or "ADL" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110, Eligibility

and Appeals, and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county or a combination of counties or cities or cities and counties under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, intellectual disability, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Case management" means services as defined in 12VAC30-50-490.

"Case manager" means the provider of case management services as defined in 12VAC30-50-490.

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Community-based waiver services" or "waiver services" means a variety of home and community-based services paid for by DMAS as authorized under a § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid ICF/IID placement.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities, or cities and counties, under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, intellectual disability, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means~~, for the purpose of these regulations,~~ a person who provides companion services.

"Companion services" means nonmedical care, supervision, and socialization provided to an adult (age 18 years or older). The provision of companion services does not entail hands-on care. It is provided in accordance with a therapeutic goal in the plan of care and is not purely diversional in nature.

"Consumer-directed attendant" or "CD attendant" means a person who provides, via the consumer-directed model of services, personal care, companion services, or respite care, or any combination of these three services, who is also exempt from workers' compensation.

"Consumer-directed employee" or "CD employee" means~~, for purposes of these regulations,~~ a person who provides, via the consumer-directed model of services, personal care, companion services, or respite care, or any combination of these three services, who is also exempt from workers' compensation.

~~"Consumer-directed services" means personal care, companion services, or respite care services where the individual or his family/caregiver, as appropriate, is responsible for hiring, training, supervising, and firing of the employee or employees.~~

~~"Consumer-directed (CD) services facilitator" means the provider enrolled with DMAS who is responsible for management training and review activities as required by DMAS for consumer-directed services.~~

"Consumer-directed (CD) model of service" means the model of service delivery for which the individual enrolled in the waiver or the employer of record, as appropriate, is responsible for hiring, training, supervising, and firing of the person or persons who render the services that are reimbursed by DMAS.

"Crisis stabilization" means direct intervention for persons with related conditions who are experiencing serious psychiatric or behavioral challenges, or both, that jeopardize their current community living situation. This service must provide temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize individuals and strengthen the current living situations so that individuals may be maintained in the community during and beyond the crisis period.

"Current functional status" means an individual's degree of dependency in performing activities of daily living.

"DARS" means the Department for Aging and Rehabilitative Services.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DBHDS staff" means employees of DBHDS who provide technical assistance and review individual level of care criteria.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means DMAS employees who perform utilization review, preauthorize service type and intensity, and provide technical assistance.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self-care, physical development, services and support activities.

These services take place outside of the individual's home/residence.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or his family/caregiver, as appropriate, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or his family/caregiver's, as appropriate, use of the providers' services.

"Employer of record" or "EOR" means the person who performs the functions of the employer in the consumer-directed model of service delivery. The EOR may be the individual enrolled in the waiver, a family member, a caregiver, or another designated person.

"Enroll" means that the individual has been determined by the IFDDS screening team to meet the eligibility requirements for the waiver, DBHDS has approved the individual's plan of care and has assigned an available slot to the individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals with disabilities on a shift and may involve interactions with the public and coworkers with disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 years according to federal guidelines that prescribe specific preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Face-to-face visit" means the case manager or service provider must meet with the individual in person and that the individual should be engaged in the visit to the maximum extent possible.

"Family/caregiver training" means training and counseling services provided to families or caregivers of individuals receiving services in the IFDDS Waiver.

~~"Fiscal agent" means an entity handling employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed services.~~

"Fiscal/employer agent" means a state agency or other entity as determined by DMAS that meets the requirements of 42 CFR 441.484 and the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).

"Home" means~~, for purposes of the IFDDS Waiver,~~ an apartment or single family dwelling in which no more than four individuals who require services live, with the exception of siblings living in the same dwelling with family. This does not include an assisted living facility or group home.

"Home and community-based waiver services" means a variety of home and community-based services reimbursed by DMAS as authorized under a § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid ICF/IID placement.

"ICF/IID" means a facility or distinct part of a facility certified as meeting the federal certification regulations for an Intermediate Care Facility for Individuals with Intellectual Disabilities and persons with related conditions. These facilities must address the residents' total needs including physical, intellectual, social, emotional, and habilitation. An ICF/IID must provide active treatment, as that term is defined in 42 CFR 483.440(a).

"IDEA" means the federal Individuals with Disabilities Education Act of 2004, 20 USC § 1400 et seq.

"ID Waiver" means the Intellectual Disability waiver.

"IFDDS screening team" means the persons employed by the entity under contract with DMAS who are responsible for performing level of care screenings for the IFDDS Waiver.

"IFDDS Waiver," "IFDDS," or "DD" means the Individual and Family Developmental Disabilities Support Waiver.

"In-home residential support services" means support provided primarily in the individual's home, which includes training, assistance, and specialized supervision to enable the individual to maintain or improve his health; assisting in performing individual care tasks; training in activities of daily living; training and use of community resources; providing life skills training; and adapting behavior to community and home-like environments.

"Instrumental activities of daily living" or "IADL" means meal preparation, shopping, housekeeping, laundry, and money management.

"Intellectual disability" or "ID" means a disability as defined by the American Association on Intellectual and

Developmental Disabilities (AAIDD) in the Intellectual Disability: Definition, Classification, and Systems of Supports (11th edition, 2010).

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for authorization of services until all required information is received by DMAS or by its authorized agent.

"Person-centered planning" means a process, directed by the individual or his family/caregiver, as appropriate, intended to identify the strengths, capacities, preferences, needs and desired outcomes of the individual.

"Personal care provider" means a participating provider that renders services to prevent or reduce inappropriate institutional care by providing eligible individuals with personal care aides to provide personal care services.

"Personal care services" means ~~long-term maintenance or~~ a range of support services necessary to enable individuals enrolled in this waiver to remain in or return to the community rather than enter an Intermediate Care Facility for Individuals with Intellectual Disabilities. Personal care services include assistance with activities of daily living, instrumental activities of daily living, access to the community, medication or other medical needs, and monitoring health status and physical condition. This does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated in accordance with 18VAC90-20-420 through 18VAC90-20-460.

"Personal emergency response system" or "PERS" means an electronic device that enables certain waiver individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Plan of care" means ~~a document~~ the written plan developed by the individual or his family/caregiver, as appropriate, and the individual's case manager addressing all needs of individuals of home and community-based waiver services, in all life areas. Supporting documentation developed by waiver service providers is to be incorporated in the plan of care by the case manager. Factors to be considered when these plans are developed must include, but are not limited to, individuals' ages, levels of functioning, and preferences.

~~"Preauthorized" means the service authorization agent has approved a service for initiation and reimbursement of the service by the service provider.~~

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for such care.

"Qualified developmental disabilities professional" or "QDDP" means a professional who (i) possesses at least one year of documented experience working directly with individuals who have related conditions; (ii) is one of the following: a doctor of medicine or osteopathy, a registered nurse, a provider holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation engineering, counseling or psychology, or a provider who has documented equivalent qualifications; and (iii) possesses the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Related conditions" means those persons who have autism or who have a severe chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. It is attributable to:

a. Cerebral palsy or epilepsy; or

b. Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability, and requires treatment or services similar to those required for these persons.

2. It is manifested before the person reaches age 22 years.

3. It is likely to continue indefinitely.

4. It results in substantial functional limitations in three or more of the following areas of major life activity:

a. Self-care.

b. Understanding and use of language.

c. Learning.

d. Mobility.

e. Self-direction.

f. Capacity for independent living.

"Respite care" means services provided for unpaid caregivers of eligible individuals who are unable to care for themselves and are provided on an episodic or routine basis because of the absence of or need for relief of those unpaid persons who routinely provide the care.

"Respite care provider" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite care services for unpaid caregivers of eligible individuals.

"Screening" means the process conducted by the IFDDS screening team to evaluate the medical, nursing, and social needs of individuals referred for screening and to determine eligibility for an ICF/IID level of care.

"Service authorization" means the designated DMAS contractor has authorized a service for initiation by the service provider.

"Services facilitation" means a service that assists the waiver individual (or family/caregiver, as appropriate) in arranging for directing, training, and managing services provided through the consumer-directed model of service.

"Services facilitator" means a DMAS-enrolled provider or DMAS-designated entity or one who is employed by or contracts with a DMAS-enrolled services facilitator, who is responsible for supporting the individual and the individual's family/caregiver or EOR, as appropriate, by ensuring the development and monitoring of the plans of care for consumer-directed model of services, providing employee management training, and completing ongoing review activities as required by the DMAS-approved consumer-directed model of services. "Services facilitator" shall be deemed to mean the same thing as "consumer-directed services facilitator."

"Skilled nursing services" means nursing services (i) listed in the plan of care that do not meet home health criteria, (ii) required to prevent institutionalization, (iii) not otherwise available under the State Plan for Medical Assistance, (iv) provided within the scope of the state's Nursing Act (§ 54.1-3000 et seq. of the Code of Virginia) and Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), and (v) provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state. Skilled nursing services are to be used to provide training, consultation, nurse delegation as appropriate, and oversight of direct care staff as appropriate.

"Slot" means an opening or vacancy of waiver services for an individual.

"Specialized supervision" means staff presence necessary for ongoing or intermittent intervention to ensure an individual's health and safety.

"State Plan for Medical Assistance" or "the State Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supporting documentation" means the specific plan of care developed by the individual and waiver service provider related solely to the specific tasks required of that service provider. Supporting documentation helps to comprise the overall plan of care for the individual, developed by the case manager and the individual.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and provision of ongoing or intermittent assistance and specialized supervision to enable an individual to maintain paid employment.

"Therapeutic consultation" means consultation provided by members of psychology, social work, rehabilitation engineering, behavioral analysis, speech therapy, occupational therapy, psychiatry, psychiatric clinical nursing, therapeutic recreation, or physical therapy or behavior consultation to assist individuals, parents, family members, in-home residential support, day support, and any other providers of support services in implementing a plan of care.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"VDH" means the Virginia Department of Health.

12VAC30-120-770. Consumer-directed model of service delivery.

A. Criteria.

1. The IFDDS Waiver has three services, companion, personal care, and respite services, that may be provided through a consumer-directed model.

2. Individuals who are eligible for consumer-directed services must have the capability to hire, train, and fire their consumer-directed ~~employees~~ attendants and supervise the ~~employee's~~ attendant's work performance. If an individual is unable to direct his own care or is younger than 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.

3. Responsibilities as employer. The individual, or if the individual is unable, then a family/caregiver, is the employer in this service (employer of record (EOR)) and is responsible for hiring, training, supervising, and firing ~~employees~~ persons who perform CD attendant duties. Specific duties of the EOR include checking references of ~~employees~~ attendants, determining that ~~employees~~ attendants meet basic qualifications, training ~~employees~~ attendants, supervising the ~~employees'~~ attendants' performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual or his family/caregiver, as appropriate, must have an emergency back-up plan in case the ~~employee~~ CD attendant does not show up for work.

4. DMAS shall contract for the services of a fiscal agent for consumer-directed personal care, companion, and respite care services. The fiscal agent will be paid by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

5. Individuals choosing consumer-directed services ~~must~~ shall receive support from a CD services facilitator.

Services facilitators assist the individual or his family/caregiver, as appropriate, as they become employers for consumer-directed services. This function includes providing the individual or his family/caregiver, as appropriate, with management training, review and explanation of the ~~Employee Management~~ EOR Manual, and routine visits to monitor the employment process. The CD services facilitator assists the individual/employer with employer issues as they arise. The services facilitator meeting the stated qualifications ~~may~~ shall also complete the assessments, reassessments, and related supporting documentation necessary for consumer-directed services if the individual or his family/caregiver, as appropriate, chooses for the CD services facilitator to perform these tasks rather than the case manager. Services facilitation services are provided on an as-needed basis as determined by the individual, family/caregiver, and CD services facilitator. This must be documented in the supporting documentation for consumer-directed services and the services facilitation provider bills accordingly. If an individual enrolled in consumer-directed services has a lapse in consumer-directed services for more than 60 consecutive calendar days, the case manager shall notify DBHDS so that consumer-directed services may be discontinued and the option given to change to agency-directed services.

6. If the services facilitator is not an RN, then, within 30 days from the start of such services, the services facilitator shall inform the primary health care provider for the individual enrolled in the waiver that consumer-directed services are being provided and request consultation with the primary health care provider, as needed. This shall be done after the services facilitator secures written permission from the individual to contact the primary health care provider. The documentation of this written permission to contact the primary health care provider shall be retained in the individual's medical record. All contacts with the primary health care provider shall be documented in the individual's medical record.

B. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-120-730 and 12VAC30-120-740, services facilitators providers must meet the following qualifications:

1. ~~To be enrolled as a Medicaid CD services facilitation provider and maintain provider status, the CD services facilitation provider must operate from a business office and have sufficient qualified staff who will function as CD services facilitators to perform the service facilitation and support activities as required. It is preferred that the employee of the CD services facilitation provider possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator has two years of satisfactory experience in the human services field working with individuals with related conditions.~~ To be enrolled as a Medicaid consumer-directed services facilitator and maintain provider status, the services facilitator shall have sufficient knowledge, skills, and abilities to perform the activities required of such providers. In addition, the services facilitator shall have the ability to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided.

2. Effective January 11, 2016, all consumer-directed services facilitators shall:

a. Have a satisfactory work record as evidenced by two references from prior job experiences from any human services work; such references shall not include any evidence of abuse, neglect, or exploitation of the elderly or persons with disabilities or children;

b. Submit to a criminal background check being conducted. The results of such check shall contain no record of conviction of barrier crimes as set forth in § 32.1-162.9:1 of the Code of Virginia. Proof that the criminal record check was conducted shall be maintained in the record of the services facilitator. In accordance with 12VAC3-80-130, DMAS shall not reimburse the provider for any services provided by a services facilitator who has been convicted of committing a barrier crime as set forth in § 32.1-162.9:1 of the Code of Virginia;

c. Submit to a search of the DSS Child Protective Services Central Registry. Such search shall not contain a founded complaint; and

d. Not be debarred, suspended, or otherwise excluded from participating in federal health care programs, as listed on the federal List of Excluded Individuals/Entities (LEIE) database at http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp;

3. The services facilitator shall not be compensated for services provided to the individual enrolled in the waiver effective on the date in which the record check verifies that the services facilitator (i) has been convicted of a barrier crime described in § 32.1-162.9:1 of the Code of Virginia; (ii) has a founded complaint confirmed by the DSS Child Protective Services Central Registry; or (iii) is found to be listed on LEIE.

4. Effective January 11, 2016, all consumer-directed services facilitators shall possess the required degree and experience, as follows:

a. Prior to initial enrollment by the department as a consumer-directed services facilitator or being hired by a Medicaid-enrolled services facilitator provider, all new applicants shall possess, at a minimum, either (i) an associate's degree from an accredited college in a health

or human services field or be a registered nurse currently licensed to practice in the Commonwealth and possess a minimum of two years of satisfactory direct care experience supporting individuals with disabilities or older adults; or (ii) a bachelor's degree in a non-health or human services field and possess a minimum of three years of satisfactory direct care experience supporting individuals with disabilities or older adults.

b. Persons who are consumer-directed services facilitators prior to January 11, 2016, shall not be required to meet the degree and experience requirements of subdivision 4 a of this subsection unless required to submit a new application to be a consumer-directed services facilitator after January 11, 2016.

5. Effective April 10, 2016, all consumer-directed services facilitators shall complete required training and competency assessments. Satisfactory competency assessment results shall be kept in the service facilitator's record.

a. All new consumer-directed services facilitators shall complete the DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80% prior to being enrolled and approved as a consumer-directed services facilitator.

b. Persons who are consumer-directed services facilitators on January 11, 2016, shall be required to complete the DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80% in order to continue being reimbursed for or working with waiver individuals for the purpose of Medicaid reimbursement.

6. Failure to satisfy the competency assessment requirements and meet all other requirements shall result in the retraction of Medicaid payment or the termination of the provider agreement, or both, or require the termination of a consumer-directed services facilitator employed by or contracted with Medicaid enrolled services facilitators.

7. As a component of the renewal of the Medicaid provider agreement, all consumer-directed services facilitators shall take and pass the competency assessment every five years and achieve a score of at least 80%.

8. The consumer-directed services facilitator shall have access to a computer with secure Internet access that meets the requirements of 45 CFR Part 164 for the electronic exchange of information. Electronic exchange of information shall include, for example, checking individual eligibility, submission of service authorizations, submission of information to the fiscal/employer agent, and billing for services.

~~2.~~ 9. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Various long-term care program requirements, including nursing home, ICF/IID, and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care services;

(2) DMAS consumer-directed services requirements, and the administrative duties for which the individual will be responsible;

(3) Interviewing techniques;

(4) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed services, including hiring, training, managing, approving time sheets, and firing an ~~employee~~ attendant;

(5) The principles of human behavior and interpersonal relationships; and

(6) General principles of record documentation.

(7) ~~For CD services facilitators who also~~ How to conduct assessments and reassessments, thus requiring the following ~~is also required. Knowledge of~~ additional knowledge:

(a) Types of functional limitations and health problems that are common to different disability types and the aging process as well as strategies to reduce limitations and health problems;

(b) Physical assistance typically required by people with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications commonly used and required by people with developmental disabilities that reduces the need for human help and improves safety; and

(d) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning.

b. Skills in:

(1) Negotiating with individuals or their family/caregivers, as appropriate, and service providers;

(2) Observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to persons with developmental disabilities; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing;

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds; and

(7) Interview.

~~3. If the CD services facilitator is not an RN, the CD services facilitator must inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed.~~

~~4.~~ 10. Initiation of services and service monitoring.

a. If the services facilitator has responsibility for individual assessments and reassessments, these must be conducted as specified in 12VAC30-120-766 and 12VAC30-120-776.

b. Management training.

(1) The CD services ~~facilitation provider must~~ facilitator shall make an initial comprehensive visit with the individual or his family/caregiver, as appropriate, to provide management training. The ~~initial~~ management training is done only once upon the individual's entry into the service. If an individual served under the waiver changes CD services facilitation providers, the new CD services facilitator ~~must~~ shall bill for a regular management training in lieu of initial management training.

(2) After the initial visit, two routine visits must occur within 60 days of the initiation of care or the initial visit to monitor the employment process.

(3) For personal care services, the CD services facilitation provider will continue to monitor on an as needed basis, not to exceed a maximum of one routine visit every 30 calendar days but no less than the minimum of one routine visit every 90 calendar days per individual. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months and for respite services, either every six months or upon the use of 300 respite care hours, whichever comes first.

~~5.~~ 11. The CD services facilitator ~~must~~ shall be available to the individual or his family/caregiver, as appropriate, by telephone during normal business hours, have voice mail capability, and return phone calls within 24 hours or have an approved back-up CD services facilitator.

~~6.~~ 12. The ~~CD services fiscal contractor for~~ DMAS ~~must~~ contracted fiscal/employer agent shall submit a criminal record check within 15 calendar days of employment pertaining to the consumer-directed ~~employees~~ attendant on behalf of the individual or family/caregiver and report findings of the criminal record check to the individual or his family/caregiver, as appropriate.

~~7.~~ 13. The CD services facilitator shall verify bi-weekly timesheets signed by the ~~individual or his family caregiver, as appropriate,~~ employer of record and the ~~employee~~ attendant to ensure that the number of plan of care approved hours are not exceeded. If discrepancies are identified, the CD services facilitator ~~must~~ shall contact the individual or family/caregiver to resolve discrepancies and ~~must~~ shall notify the fiscal agent. If an individual is consistently being identified as having discrepancies in his timesheets, the CD services facilitator ~~must~~ shall contact the case manager to resolve the situation. Failure to conduct timesheet verifications and maintain the documentation of all verifications shall result in DMAS' recovery of payments made.

~~8.~~ 14. Consumer-directed ~~employee~~ attendant registry. The CD services facilitator ~~must~~ shall maintain a consumer-directed ~~employee~~ attendant registry, updated on an ongoing basis.

~~9.~~ 15. Required documentation in individuals' records. CD services facilitators responsible for individual assessment and reassessment ~~must~~ shall maintain records as described in 12VAC30-120-766 and 12VAC30-120-776 and monitor them to ensure compliance with these requirements. For CD services facilitators conducting management training, the following documentation is required in the individual's record:

a. All copies of the plan of care, all supporting documentation related to consumer-directed services, and all DMAS-225 forms.

b. CD services facilitator's notes recorded and dated at the time of service delivery.

c. All correspondence to the individual, to others concerning the individual, and to DMAS and DBHDS.

~~d. All training provided to the consumer-directed employees on behalf of the individual or his family/caregiver, as appropriate.~~

~~e.~~ d. All management training provided to the ~~individuals or his family/caregivers, as appropriate,~~ EOR, including the responsibility for the accuracy of the timesheets.

~~f.~~ e. All documents signed by the ~~individual or his family/caregiver, as appropriate,~~ EOR that acknowledge the responsibilities of the services.

f. Monitoring verifications shall be documented in the individual's medical record.

Failure to conduct verifications and maintain the required documentation of all verifications and contacts with the individual and all health care providers about the individual shall result in DMAS' recovery of payments made.

Part IX
Elderly or Disabled with Consumer Direction Waiver

12VAC30-120-900. Definitions.

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

"Activities of daily living" or "ADLs" means personal care tasks such as bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Adult day health care " or "ADHC" means long-term maintenance or supportive services offered by a DMAS-enrolled community-based day care program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those waiver individuals who are elderly or who have a disability and who are at risk of placement in a nursing facility (NF). The program shall be licensed by the Virginia Department of Social Services (VDSS) as an adult day care center (ADCC). The services offered by the center shall be required by the waiver individual in order to permit the individual to remain in his home rather than entering a nursing facility. ADHC can also refer to the center where this service is provided.

"Agency-directed model of service" means a model of service delivery where an agency is responsible for

providing direct support staff, for maintaining individuals' records, and for scheduling the dates and times of the direct support staff's presence in the individuals' homes for personal and respite care.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq.

"Annually" means a period of time covering 365 consecutive calendar days or 366 consecutive days in the case of leap years.

"Appeal" means the process used to challenge actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" or "AT" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable waiver individuals who are participating in the Money Follows the Person demonstration program pursuant to Part XX (12VAC30-120-2000 et seq.) to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Barrier crime" means those crimes as defined at § 32.1-162.9:1 of the Code of Virginia that would prohibit the continuation of employment if a person is found through a Virginia State Police criminal record check to have been convicted of such a crime.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Cognitive impairment" means a severe deficit in mental capability that affects a waiver individual's areas of functioning such as thought processes, problem solving, judgment, memory, or comprehension that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

~~"Conservator" means a person appointed by a court to manage the estate and financial affairs of an incapacitated individual.~~

"Consumer-directed attendant" means a person who provides, via the consumer-directed model of services, personal care, companion services, or respite care, or any combination of these three services, who is also exempt from workers' compensation.

"Consumer-directed (CD) model of service" means the model of service delivery for which the ~~waiver~~ individual enrolled in the waiver or the individual's employer of record, as appropriate, ~~are~~ is responsible for hiring, training, supervising, and firing of the ~~person or persons~~ attendant or attendants who ~~actually~~ render the services that are reimbursed by DMAS.

"Consumer-directed services facilitator," "CD services facilitator," or "facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the consumer-directed services plan of care, providing attendant management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services.

"DARS" means the Department for Aging and Rehabilitative Services.

"Day" means, for the purposes of reimbursement, a 24-hour period beginning at 12 a.m. and ending at 11:59 p.m.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"Direct marketing" means any of the following: (i) conducting either directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) using direct mailing; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) providing continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or

(vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"Elderly or Disabled with Consumer Direction Waiver" or "EDCD Waiver" means the CMS-approved waiver that covers a range of community support services offered to waiver individuals who are elderly or who have a disability who would otherwise require a nursing facility level of care.

"Employer of record" or "EOR" means the person who performs the functions of the employer in the consumer-directed model of service delivery. The EOR may be the individual enrolled in the waiver, a family member, caregiver, or another person.

"Environmental modifications" or "EM" means physical adaptations to an individual's primary home or primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.), which are necessary to ensure the individual's health and safety or enable functioning with greater independence and shall be of direct medical or remedial benefit to individuals who are participating in the Money Follows the Person demonstration program pursuant to Part XX (12VAC30-120-2000 et seq.). Such physical adaptations shall not be authorized for Medicaid payment when the adaptation is being used to bring a substandard dwelling up to minimum habitation standards.

"Fiscal/employer agent" means a state agency or other entity as determined by DMAS that meets the requirements of 42 CFR 441.484 and the Virginia Public Procurement Act, § 2.2-4300 et seq. of the Code of Virginia.

"Guardian" means a person appointed by a court to manage the personal affairs of an incapacitated individual pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 of the Code of Virginia.

"Health, safety, and welfare standard" means, for the purposes of this waiver, that an individual's right to receive an EDCD Waiver service is dependent on a determination that the waiver individual needs the service based on appropriate assessment criteria and a written plan of care, including having a backup plan of care, that demonstrates medical necessity and that services can be safely provided in the community or through the model of care selected by the individual.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to individuals as an alternative to institutionalization.

"Individual" means the person who has applied for and been approved to receive these waiver services.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping and laundry. An individual's degree of independence in performing these activities is a part of determining appropriate service needs.

"Level of care" or "LOC" means the specification of the minimum amount of assistance an individual requires in order to receive services in an institutional setting under the State Plan or to receive waiver services.

"License" means proof of official or legal permission issued by the government for an entity or person to perform an activity or service such that, in the absence of an official license, the entity or person is debarred from performing the activity or service.

"Licensed Practical Nurse" or "LPN" means a person who is licensed or holds multi-state licensure to practice nursing pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

"Live-in caregiver" means a personal caregiver who resides in the same household as the individual who is receiving waiver services.

"Long-term care" or "LTC" means a variety of services that help individuals with health or personal care needs and activities of daily living over a period of time. Long-term care can be provided in the home, in the community, or in various types of facilities, including nursing facilities and assisted living facilities.

"Medicaid Long-Term Care (LTC) Communication Form" or "DMAS-225" means the form used by the long-term care provider to report information about changes in an individual's eligibility and financial circumstances.

"Medication monitoring" means an electronic device, which is only available in conjunction with Personal Emergency Response Systems, that enables certain waiver individuals who are at risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"Money Follows the Person" or "MFP" means the demonstration program, as set out in 12VAC30-120-2000 and 12VAC30-120-2010.

"Participating provider" or "provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement, including managed care organizations, with DMAS.

"Patient pay amount" means the portion of the individual's income that must be paid as his share of the long-term care services and is calculated by the local department of social services based on the individual's documented monthly income and permitted deductions.

"Personal care agency" means a participating provider that provides personal care services.

"Personal care aide" or "aide" means a person employed by an agency who provides personal care or unskilled respite services. The aide shall have successfully completed an educational curriculum of at least 40 hours of study related to the needs of individuals who are either elderly or who have disabilities as further set out in 12VAC30-120-935. Such successful completion may be evidenced by the existence of a certificate of completion, which is provided to DMAS during provider audits, issued by the training entity.

"Personal care attendant" or "attendant" means a person who provides personal care or respite services that are directed by a consumer, family member/caregiver, or employer of record under the CD model of service delivery.

"Personal care services" means a range of support services necessary to enable the waiver individual to remain at or return home rather than enter a nursing facility and that includes assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), access to the community, self-administration of medication, or other medical needs, supervision, and the monitoring of health status and physical condition. Personal care services shall be provided by aides, within the scope of their licenses/certificates, as appropriate, under the agency-directed model or by personal care attendants under the CD model of service delivery.

"Personal emergency response system" or "PERS" means an electronic device and monitoring service that enables certain waiver individuals, who are at least 14 years of age, at risk of institutionalization to secure help in an emergency. PERS services shall be limited to those waiver individuals who live alone or who are alone for significant parts of the day and who have no regular caregiver for extended periods of time.

"PERS provider" means a certified home health or a personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the responsibility to furnish, install, maintain, test, monitor, and service PERS equipment, direct services (i.e., installation, equipment maintenance, and services calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"Plan of care" or "POC" means the written plan developed collaboratively by the waiver individual and the waiver individual's family/caregiver, as appropriate, and the provider related solely to the specific services necessary for the individual to remain in the community while ensuring his health, safety, and welfare.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening for certain long-term care services requiring NF eligibility; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) provide a list to individuals of appropriate providers for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission Screening Team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Primary caregiver" means the person who consistently assumes the primary role of providing direct care and support of the waiver individual to live successfully in the community without receiving compensation for providing such care. Such person's name, if applicable, shall be documented by the RN or services facilitator in the waiver individual's record. Waiver individuals are not required to have a primary caregiver in order to participate in the EDCD waiver.

"Registered nurse" or "RN" means a person who is licensed or who holds multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice nursing.

"Respite care agency" means a participating provider that renders respite services.

"Respite services" means services provided to waiver individuals who are unable to care for themselves that are furnished on a short-term basis because of the absence of or need for the relief of the unpaid primary caregiver who normally provides the care.

"Services facilitation" means a service that assists the waiver individual (or family/caregiver, as appropriate) for directing, training, and managing services provided through the consumer-directed model of service.

"Services facilitator" means a DMAS-enrolled provider or DMAS-designated entity or one who is employed or contracted by a DMAS-enrolled services facilitator, who is responsible for supporting the individual and the individual's family/caregiver or EOR, as appropriate, by ensuring the development and monitoring of the CD services plans of care, providing attendant management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services. "Services facilitator" shall be deemed to mean the same thing as "consumer-directed services facilitator."

"Service authorization" or "Srv Auth" means the process of approving either by DMAS, its service authorization contractor, or DMAS-designated entity, for the purposes of reimbursement for a service for the individual before it is rendered or reimbursed.

"Service authorization contractor" means DMAS or the entity that has been contracted by DMAS to perform service authorization for medically necessary Medicaid covered home and community-based services.

"Services facilitation" means a service that assists the waiver individual (or family/caregiver, as appropriate) in arranging

for, directing, training, and managing services provided through the consumer-directed model of service.

"Services facilitator" means a DMAS-enrolled provider or DMAS-designated entity that is responsible for supporting the individual and the individual's family/caregiver or EOR, as appropriate, by ensuring the development and monitoring of the CD services plans of care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services. Services facilitator shall be deemed to mean the same thing as consumer-directed services facilitator.

"Skilled respite services" means temporary skilled nursing services that are provided to waiver individuals who need such services and that are performed by a LPN for the relief of the unpaid primary caregiver who normally provides the care.

"State Plan for Medical Assistance" or "State Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Transition coordinator" means the person defined in 12VAC30-120-2000 who facilitates MFP transition.

"Transition services" means set-up expenses for individuals as defined at 12VAC30-120-2010.

"VDH" means the Virginia Department of Health.

"VDSS" means the Virginia Department of Social Services.

"Virginia Uniform Assessment Instrument" or "UAI" means the standardized multidimensional comprehensive assessment that is completed by the Preadmission Screening Team or approved hospital discharge planner that assesses an individual's physical health, mental health, and psycho/social and functional abilities to determine if the individual meets the nursing facility level of care.

"Weekly" means a span of time covering seven consecutive calendar days.

12VAC30-120-935. Participation standards for specific covered services.

A. The personal care providers, respite care providers, ADHC providers, and CD services facilitators shall develop an individualized POC that addresses the waiver individual's service needs. Such plan shall be developed in collaboration with the waiver individual or the individual's family/caregiver/EOR, as appropriate.

B. Agency providers shall employ appropriately licensed professional staff who can provide the covered waiver services required by the waiver individuals. Providers shall require that the supervising RN/LPN be available by phone at all times that the LPN/attendant and consumer-directed services facilitators, as appropriate, are providing services to the waiver individual.

C. Agency staff (RN, LPNs, or aides) or CD ~~employees (attendants)~~ attendants shall not be reimbursed by DMAS for services rendered to waiver individuals when the agency staff or the CD ~~employee~~ attendant is either (i) the spouse of the waiver individual or (ii) the parent (biological, adoptive, legal guardian) or other legal guardian of the minor child waiver individual.

1. Payment shall not be made for services furnished by other family members living under the same roof as the individual enrolled in the waiver receiving services unless there is objective written documentation completed by the services facilitator as to why there are no other providers available to render the personal services. The consumer-directed services facilitator shall initially make this determination and document it fully in the individual's record.

2. Family members who are approved to be reimbursed for providing personal services shall meet the same qualifications as all other CD attendants.

D. Failure to provide the required services, conduct the required reviews, and meet the documentation standards as stated herein may result in DMAS charging audited providers with overpayments and requiring the return of the overpaid funds.

E. In addition to meeting the general conditions and requirements, home and community-based services participating providers shall also meet the following requirements:

1. ADHC services provider. In order to provide these services, the ADCC shall:

a. Make available a copy of the current VDSS license for DMAS' review and verification purposes prior to the provider applicant's enrollment as a Medicaid provider;

b. Adhere to VDSS' ADCC standards as defined in 22VAC40-60 including, but not limited to, provision of activities for waiver individuals; and

c. Employ the following:

(1) A director who shall be responsible for overall management of the center's programs and employees pursuant to 22VAC40-60-320. The director shall be the provider contact person for DMAS and the designated Srv Auth contractor and shall be responsible for responding to communication from DMAS and the designated Srv Auth contractor. The director shall be responsible for ensuring the development of the POCs for waiver individuals. The director shall assign either himself, the activities director if there is one, RN, or therapist to act as the care coordinator for each waiver individual and shall document in the individual's medical record the identity of the care coordinator. The care coordinator shall be responsible for management of the waiver individual's POC and for its review with the program aides and any other staff, as necessary.

(2) A RN who shall be responsible for administering to and monitoring the health needs of waiver individuals. The RN may also contract with the center. The RN shall be responsible for the planning and implementation of the POC involving multiple services where specialized health care knowledge may be needed. The RN shall be present a minimum of eight hours each month at the center. DMAS may require the RN's presence at the center for more than this minimum standard depending on the number of waiver individuals who are in attendance and according to the medical and nursing needs of the waiver individuals who attend the center. Although DMAS does not require that the RN be a full-time staff position, there shall be a RN available, either in person or by telephone, to the center's waiver individuals and staff during all times that the center is in operation. The RN shall be responsible for:

(a) Providing periodic evaluation, at least every 90 days, of the nursing needs of each waiver individual;

(b) Providing the nursing care and treatment as documented in individuals' POCs; and

(c) Monitoring, recording, and administering of prescribed medications or supervising the waiver individual in self-administered medication.

(3) Personal care aides who shall be responsible for overall care of waiver individuals such as assistance with ADLs, social/recreational activities, and other health and therapeutic-related activities. Each program aide hired by the provider shall be screened to ensure compliance with training and skill mastery qualifications required by DMAS. The aide shall, at a minimum, have the following qualifications:

(a) Be 18 years of age or older;

(b) Be able to read and write in English to the degree necessary to perform the tasks expected and create and maintain the required waiver individual documentation of services rendered;

(c) Be physically able to perform the work and have the skills required to perform the tasks required in the waiver individual's POC;

(d) Have a valid social security number issued to the program aide by the Social Security Administration;

(e) Have satisfactorily completed an educational curriculum as set out in clauses (i), (ii), and (iii) of this subdivision E 1 c 3 (e). Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by DMAS' staff. Prior to assigning a program aide to a waiver individual, the center shall ensure that the aide has either (i) registered with the Board of Nursing as a certified nurse aide; (ii) graduated from an approved educational curriculum as listed by the Board of Nursing; or (iii) completed the provider's educational curriculum, at least 40 hours in duration, as taught by an RN who is licensed in the Commonwealth or who holds a multi-state licensing privilege.

(4) The ADHC coordinator who shall coordinate, pursuant to 22VAC40-60-695, the delivery of the activities and services as prescribed in the waiver individuals' POCs and keep such plans updated, record 30-day progress notes concerning each waiver individual, and review the waiver individuals' daily records each week. If a waiver individual's condition changes more frequently, more frequent reviews and recording of progress notes shall be required to reflect the individual's changing condition.

2. Recreation and social activities responsibilities. The center shall provide planned recreational and social activities suited to the waiver individuals' needs and interests and designed to encourage physical exercise, prevent deterioration of each waiver individual's condition, and stimulate social interaction.

3. The center shall maintain all records of each Medicaid individual. These records shall be reviewed periodically by DMAS staff or its designated agent who is authorized by DMAS to review these files. At a minimum, these records shall contain, but shall not necessarily be limited to:

a. DMAS required forms as specified in the center's provider-appropriate guidance documents;

b. Interdisciplinary POCs developed, in collaboration with the waiver individual or family/caregiver, or both as may be appropriate, by the center's director, RN, and therapist, as may be appropriate, and any other relevant support persons;

c. Documentation of interdisciplinary staff meetings that shall be held at least every three months to reassess each waiver individual and evaluate the adequacy of the POC and make any necessary revisions;

d. At a minimum, 30-day goal-oriented progress notes recorded by the designated ADHC care coordinator. If a waiver individual's condition and treatment POC changes more often, progress notes shall be written more frequently than every 30 days;

e. The daily record of services provided shall contain the specific services delivered by center staff. The record shall also contain the arrival and departure times of the waiver individual and shall be signed weekly by either the director, activities director, RN, or therapist employed by the center. The record shall be completed on a daily basis, neither before nor after the date of services delivery. At least once a week, a staff member shall chart significant comments regarding care given to the waiver individual. If the staff member writing comments is different from the staff signing the weekly record, that staff member shall sign the weekly comments. A copy of this record shall be given weekly to

the waiver individual or family/caregiver, and it shall also be maintained in the waiver individual-specific medical record; and

f. All contacts shall be documented in the waiver individual's medical record, including correspondence made to and from the individual with family/caregivers, physicians, DMAS, the designated Srv Auth contractor, formal and informal services providers, and all other professionals related to the waiver individual's Medicaid services or medical care.

F. Agency-directed personal care services. The personal care provider agency shall hire or contract with and directly supervise a RN who provides ongoing supervision of all personal care aides and LPNs. LPNs may supervise, pursuant to their licenses, personal care aides based upon RN assessment of the waiver individuals' health, safety, and welfare needs.

1. The RN supervisor shall make an initial home assessment visit on or before the start of care for all individuals admitted to personal care, when a waiver individual is readmitted after being discharged from services, or if he is transferred from another provider, ADHC, or from a CD services program.

2. During a home visit, the RN supervisor shall evaluate, at least every 90 days, the LPN supervisor's performance and the waiver individual's needs to ensure the LPN supervisor's abilities to function competently and shall provide training as necessary. This shall be documented in the waiver individual's record. A reassessment of the individual's needs and review of the POC shall be performed and documented during these visits.

3. The RN/LPN supervisor shall also make supervisory visits based on the assessment and evaluation of the care needs of waiver individuals as often as needed and as defined in this subdivision to ensure both quality and appropriateness of services.

a. The personal care provider agency shall have the responsibility of determining when supervisory visits are appropriate for the waiver individual's health, safety, and welfare. Supervisory visits shall be at least every 90 days. This determination must be documented in the waiver individuals' records by the RN on the initial assessment and in the ongoing assessment records.

b. If DMAS determines that the waiver individual's health, safety, or welfare is in jeopardy, DMAS may require the provider's RN or LPN supervisor to supervise the personal care aides more frequently than once every 90 days. These visits shall be conducted at this designated increased frequency until DMAS determines that the waiver individual's health, safety, or welfare is no longer in jeopardy. This shall be documented by the provider and entered into the individual's record.

c. During visits to the waiver individual's home, the RN/LPN supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the individual's current functioning status and medical and social needs. The personal care aide's record shall be reviewed and the waiver individual's or family's/caregiver's, or both, satisfaction with the type and amount of services discussed.

d. If the supervising RN/LPN must be delayed in conducting the regular supervisory visit, such delay shall be documented in the waiver individual's record with the reasons for the delay. Such supervisory visits shall be conducted within 15 calendar days of the waiver individual's first availability.

e. A RN/LPN supervisor shall be available to the personal care aide for conferences pertaining to waiver individuals being served by the aide.

(1) The RN/LPN supervisor shall be available to the aide by telephone at all times that the aide is providing services to waiver individuals.

(2) The RN/LPN supervisor shall evaluate the personal care aide's performance and the waiver individual's needs to identify any insufficiencies in the personal care aide's abilities to function competently and shall provide training as indicated. This shall be documented in the waiver individual's record.

f. Licensed practical nurses (LPNs). As permitted by his license, the LPN may supervise personal care aides. To ensure both quality and appropriateness of services, the LPN supervisor shall make supervisory visits of the aides as often as needed, but no fewer visits than provided in waiver individuals' POCs as developed by the RN in collaboration with individuals and the individuals' family/caregivers, or both, as appropriate.

(1) During visits to the waiver individual's home, a LPN-supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services, the individual's current functioning status and social needs. The personal care aide's record shall be reviewed and the waiver individual's or family/caregiver's, or both, satisfaction with the type and amount of services discussed.

(2) The LPN supervisor shall evaluate the personal care aide's performance and the waiver individual's needs to identify any insufficiencies in the aide's abilities to function competently and shall provide training as required to resolve the insufficiencies. This shall be documented in the waiver individual's record and reported to the RN supervisor.

(3) An LPN supervisor shall be available to personal care aides for conferences pertaining to waiver individuals being served by them.

g. Personal care aides. The agency provider may employ and the RN/LPN supervisor shall directly supervise personal care aides who provide direct care to waiver individuals. Each aide hired to provide personal care shall be evaluated by the provider agency to ensure compliance with qualifications and skills required by DMAS pursuant to 12VAC30-120-930.

4. Payment shall not be made for services furnished by family members or caregivers who are living under the same roof as the waiver individual receiving services, unless there is objective written documentation as to why there are no other providers or aides available to provide the care. The provider shall initially make this determination and document it fully in the waiver individual's record.

5. Required documentation for waiver individuals' records. The provider shall maintain all records for each individual receiving personal care services. These records shall be separate from those of non-home and community-based care services, such as companion or home health services. These records shall be reviewed periodically by DMAS or its designated agent. At a minimum, the record shall contain:

a. All personal care aides' records (DMAS-90) to include (i) the specific services delivered to the waiver individual by the aide; (ii) the personal care aide's actual daily arrival and departure times; (iii) the aide's weekly comments or observations about the waiver individual, including observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and (iv) any other information appropriate and relevant to the waiver individual's care and need for services.

b. The personal care aide's and individual's or responsible caregiver's signatures, including the date, shall be recorded on these records verifying that personal care services have been rendered during the week of the service delivery.

(1) An employee of the provider shall not sign for the waiver individual unless he is a family member or unpaid caregiver of the waiver individual.

(2) Signatures, times, and dates shall not be placed on the personal care aide record earlier than the last day of the week in which services were provided nor later than seven calendar days from the date of the last service.

G. Agency-directed respite care services.

1. To be approved as a respite care provider with DMAS, the respite care agency provider shall:

a. Employ or contract with and directly supervise either a RN or LPN, or both, who will provide ongoing supervision of all respite care aides/LPNs, as appropriate. A RN shall provide supervision to all direct care and supervisory LPNs.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of the required RN/LPN supervisor's visits shall not exceed every 90 days, based on the initial assessment. If an individual is also receiving personal care services, the respite care RN/LPN supervisory visit may coincide with the personal care RN/LPN supervisory visits. However, the RN/LPN supervisor shall document supervision of respite care separately from the personal care documentation. For this purpose, the same individual record may be used with a separate section for respite care documentation.

(2) When respite care services are not received on a routine basis but are episodic in nature, a RN/LPN supervisor shall conduct the home supervisory visit with the aide/LPN on or before the start of care. The RN/LPN shall review the utilization of respite services either every six months or upon the use of half of the approved respite hours, whichever comes first. If a waiver individual is also receiving personal care services, the respite care RN/LPN supervisory visit may coincide with the personal care RN/LPN supervisory visit.

(3) During visits to the waiver individual's home, the RN/LPN supervisor shall observe, evaluate, and document the adequacy and appropriateness of respite care services to the waiver individual's current functioning status and medical and social needs. The aide's/LPN's record shall be reviewed along with the waiver individual's or family's/caregiver's, or both, satisfaction with the type and amount of services discussed.

(4) Should the required RN/LPN supervisory visit be delayed, the reason for the delay shall be documented in the waiver individual's record. This visit shall be completed within 15 days of the waiver individual's first availability.

b. Employ or contract with aides to provide respite care services who shall meet the same education and training requirements as personal care aides.

c. Not hire respite care aides for DMAS' reimbursement for services that are rendered to waiver individuals when the aide is either (i) the spouse of the waiver individual or (ii) the parent (biological, adoptive, legal guardian) or other guardian of the minor child waiver individual.

d. Employ an LPN to perform skilled respite care services. Such services shall be reimbursed by DMAS under the following circumstances:

(1) The waiver individual shall have a documented need for routine skilled respite care that cannot be provided by unlicensed personnel, such as an aide. These waiver individuals would typically require a skilled level of care involving, for example but not necessarily limited to, ventilators for assistance with breathing or either nasogastric or gastrostomy feedings;

(2) No other person in the waiver individual's support system is willing and able to supply the skilled component of the individual's care during the primary caregiver's absence; and

(3) The waiver individual is unable to receive skilled nursing visits from any other source that could provide the skilled care usually given by the caregiver.

e. Document in the waiver individual's record the circumstances that require the provision of services by an LPN. At the time of the LPN's service, the LPN shall also provide all of the services normally provided by an aide.

2. Payment shall not be made for services furnished by other family members or caregivers who are living under the same roof as the waiver individual receiving services unless there is objective written documentation as to why there are no other providers or aides available to provide the care. The provider shall initially make this determination and document it fully in the waiver individual's record.

3. Required documentation for waiver individuals' records. The provider shall maintain all records for each waiver individual receiving respite services. These records shall be separate from those of non-home and community-based care services, such as companion or home health services. These records shall be reviewed periodically either by the DMAS staff or a contracted entity who is authorized by DMAS to review these files. At a minimum these records shall contain:

a. Forms as specified in the DMAS guidance documents.

b. All respite care LPN/aide records shall contain:

(1) The specific services delivered to the waiver individual by the LPN/aide;

(2) The respite care LPN's/aide's daily arrival and departure times;

(3) Comments or observations recorded weekly about the waiver individual. LPN/aide comments shall include, but shall not be limited to, observation of the waiver individual's physical and emotional condition, daily activities, the individual's response to services rendered, and documentation of vital signs if taken as part of the POC.

c. All respite care LPN records (DMAS-90A) shall be reviewed and signed by the supervising RN and shall contain:

(1) The respite care LPN/aide's and waiver individual's or responsible family/caregiver's signatures, including the date, verifying that respite care services have been rendered during the week of service delivery as documented in the record.

(2) An employee of the provider shall not sign for the waiver individual unless he is a family member or unpaid caregiver of the waiver individual.

(3) Signatures, times, and dates shall not be placed on the respite care LPN/aide record earlier than the last day of the week in which services were provided. Nor shall signatures be placed on the respite care LPN/aide records later than seven calendar days from the date of the last service.

~~H. Consumer-directed (CD) services facilitation for personal care and respite services.~~

~~1. Any services rendered by attendants prior to dates authorized by DMAS or the Srv Auth contractor shall not be eligible for Medicaid reimbursement and shall be the responsibility of the waiver individual.~~

~~2. The CD services facilitator shall meet the following qualifications:~~

~~a. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient knowledge, skills, and abilities to perform the activities required of such providers. In addition, the CD services facilitator shall have the ability to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided.~~

~~b. It is preferred that the CD services facilitator possess, at a minimum, an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have at least two years of satisfactory experience in a human services field working with individuals who are disabled or elderly. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities described below in this subdivision H 2 b. Such knowledge, skills, and abilities must be documented on the CD services facilitator's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:~~

~~(1) Knowledge of:~~

~~(a) Types of functional limitations and health problems that may occur in individuals who are elderly or individuals with disabilities, as well as strategies to reduce limitations and health problems;~~

~~(b) Physical care that may be required by individuals who are elderly or individuals with disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;~~

~~(c) Equipment and environmental modifications that may be required by individuals who are elderly or individuals with disabilities that reduce the need for human help and improve safety;~~

(d) Various long-term care program requirements, including nursing facility and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care and respite services;

(e) Elderly or Disabled with Consumer Direction Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(f) How to conduct assessments (including environmental, psychosocial, health, and functional factors) and their uses in services planning;

(g) Interviewing techniques;

(h) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed services, including hiring, training, managing, approving time sheets of, and firing an aide;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with individuals, family/caregivers, and service providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing services to individuals who are elderly or individuals with disabilities; and

(d) Identifying services within the established services system to meet the individual's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(b) Demonstrate a positive regard for individuals and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively orally and in writing; and

(f) Develop a rapport and communicate with individuals from diverse cultural backgrounds.

c. If the CD services facilitator is not a RN, the CD services facilitator shall inform the waiver individual's primary health care provider that services are being provided and request consultation as needed. These contacts shall be documented in the waiver individual's record.

3. Initiation of services and service monitoring.

a. For CD services, the CD services facilitator shall make an initial comprehensive in-home visit at the primary residence of the waiver individual to collaborate with the waiver individual or family/caregiver to identify the needs, assist in the development of the POC with the waiver individual or family/caregiver, as appropriate, and provide employer of record (EOR) employee management training within seven days of the initial visit. The initial comprehensive home visit shall be conducted only once upon the waiver individual's entry into CD services. If the waiver individual changes, either voluntarily or involuntarily, the CD services facilitator, the new CD services facilitator must complete a reassessment visit in lieu of an initial comprehensive visit.

b. After the initial comprehensive visit, the CD services facilitator shall continue to monitor the POC on an as-needed basis, but in no event less frequently than every 90 days for personal care, and shall conduct face-to-face meetings with the waiver individual and may include the family/caregiver. The CD services facilitator shall review the utilization of CD respite services, either every six months or upon the use of half of the approved respite services hours, whichever comes first, and shall conduct a face-to-face meeting with the waiver individual and may include the family/caregiver.

c. During visits with the waiver individual, the CD services facilitator shall observe, evaluate, and consult with the individual/EOR and may include the family/caregiver, and document the adequacy and appropriateness of CD services with regard to the waiver individual's current functioning, cognitive status, and medical and social needs. The CD services facilitator's written summary of the visit shall include, but shall not necessarily be limited to:

(1) A discussion with the waiver individual or family/caregiver/EOR concerning whether the service is adequate to meet the waiver individual's needs;

(2) Any suspected abuse, neglect, or exploitation and to whom it was reported;

(3) Any special tasks performed by the attendant and the attendant's qualifications to perform these tasks;

(4) The waiver individual's or family/caregiver's/EOR's satisfaction with the service;

(5) Any hospitalization or change in medical condition, functioning, or cognitive status; and

(6) The presence or absence of the attendant in the home during the CD services facilitator's visit.

4. DMAS, its designated contractor, or the fiscal/employer agent shall request a criminal record check and a check of the VDSS Child Protective Services Central Registry if the waiver individual is a minor child, in accordance with 12VAC30-120-930, pertaining to the attendant on behalf of the waiver individual and report findings of these records checks to the EOR.

5. The CD services facilitator shall review copies of timesheets during the face-to-face visits to ensure that the hours approved in the POC are being provided and are not exceeded. If discrepancies are identified, the CD services facilitator shall discuss these with the waiver individual or EOR to resolve discrepancies and shall notify the fiscal/employer agent. The CD services facilitator shall also review the waiver individual's POC to ensure that the waiver individual's needs are being met.

6. The CD services facilitator shall maintain records of each waiver individual that he serves. At a minimum, these records shall contain:

a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

b. The personal care POC. Such plans shall be reviewed by the provider every 90 days, annually, and more often as needed, and modified as appropriate. The respite services POC shall be included in the record and shall be reviewed by the provider every six months or when half of the approved respite service hours have been used whichever comes first. For the annual review and in cases where either the personal care or respite care POC is modified, the POC shall be reviewed with the waiver individual, the family/caregiver, and EOR, as appropriate;

c. CD services facilitator's dated notes documenting any contacts with the waiver individual or family/caregiver/EOR and visits to the individual;

d. All contacts, including correspondence, made to and from the waiver individual, EOR, family/caregiver, physicians, DMAS, the designated Srv Auth contractor, formal and informal services provider, and all other professionals related to the individual's Medicaid services or medical care;

e. All employer management training provided to the waiver individual or EOR to include, but not necessarily be limited to (i) the individual's or EOR's receipt of training on their responsibilities for the accuracy of the attendant's timesheets and (ii) the availability of the Consumer-Directed Waiver Services Employer Manual available at www.dmas.virginia.gov;

f. All documents signed by the waiver individual or EOR, as appropriate, that acknowledge the responsibilities as the employer; and

g. The DMAS-required forms as specified in the agency's waiver-specific guidance document.

7. Payment shall not be made for services furnished by other family members or caregivers who are living under the same roof as the waiver individual receiving services unless there is objective written documentation by the CD services facilitator as to why there are no other providers or aides available to provide the required care.

8. In instances when either the waiver individual is consistently unable to hire and retain the employment of a personal care attendant to provide CD personal care or respite services such as, but not limited to, a pattern of discrepancies with the attendant's timesheets, the CD services facilitator shall make arrangements, after conferring with DMAS, to have the needed services transferred to an agency-directed services provider of the individual's choice or discuss with the waiver individual or family/caregiver/EOR, or both, other service options.

9. Waiver individual responsibilities.

a. The waiver individual shall be authorized for CD services and the EOR shall successfully complete consumer/employee-management training performed by the CD services facilitator before the individual shall be permitted to hire an attendant for Medicaid reimbursement. Any services that may be rendered by an attendant prior to authorization by Medicaid shall not be eligible for reimbursement by Medicaid. Waiver individuals who are eligible for CD services shall have the capability to hire and train their own attendants and supervise the attendants' performance. Waiver individuals may have a family/caregiver or other designated person serve as the EOR on their behalf. The EOR shall be prohibited from also being the Medicaid-reimbursed attendant for respite or personal care or the services facilitator for the waiver individual.

b. Waiver individuals shall acknowledge that they will not knowingly continue to accept CD personal care services when the service is no longer appropriate or necessary for their care needs and shall inform the services facilitator of their change in care needs. If CD services continue after services have been terminated by DMAS or the designated Srv Auth contractor, the waiver individual shall be held liable for attendant compensation.

c. Waiver individuals shall notify the CD services facilitator of all hospitalizations or admissions, such as but not necessarily limited to, any rehabilitation facility, rehabilitation unit, or NF as CD attendant services shall not be reimbursed during such admissions. Failure to do so may result in the waiver individual being held liable for attendant compensation.

d. Waiver individuals shall not employ attendants for DMAS reimbursement for services rendered to themselves when the attendant is the (i) spouse of the waiver individual; (ii) parent (biological, adoptive, legal guardian) or other guardian of the minor child waiver individual; or (iii) family/caregiver or caregivers/EOR who may be directing the waiver individual's care.

H. Consumer-directed (CD) services facilitation for personal care and respite services.

1. Any services rendered by attendants prior to dates authorized by DMAS or the service authorization contractor shall not be eligible for Medicaid reimbursement and shall be the responsibility of the waiver individual.

2. If the services facilitator is not an RN, then the services facilitator shall inform the primary health care provider for the individual who is enrolled in the waiver that services are being provided within 30 days from the start of such services and request consultation with the primary health care provider, as needed. This shall be done after the services facilitator secures written permission from the individual to contact the primary health care provider. The documentation of this written permission to contact the primary health care provider shall be retained in the individual's medical record. All contacts with the primary health care provider shall be documented in the individual's medical record.

3. The consumer-directed services facilitator, whether employed or contracted by a DMAS enrolled services facilitator, shall meet the following qualifications:

a. To be enrolled as a Medicaid consumer-directed services facilitator and maintain provider status, the consumer-directed services facilitator shall have sufficient knowledge, skills, and abilities to perform the activities required of such providers. In addition, the consumer-directed services facilitator shall have the ability to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided.

b. Effective January 11, 2016, all consumer-directed services facilitators shall:

(1) Have a satisfactory work record as evidenced by two references from prior job experiences from any human services work; such references shall not include any evidence of abuse, neglect, or exploitation of the elderly or persons with disabilities or children;

(2) Submit to a criminal background check being conducted. The results of such check shall contain no record of conviction of barrier crimes as set forth in § 32.1-162.9:1 of the Code of Virginia. Proof that the criminal record check was conducted shall be maintained in the record of the services facilitator. In accordance with 12VAC30-80-130, DMAS shall not reimburse the provider for any services provided by a services facilitator who has been convicted of committing a barrier crime as set forth in § 32.1-162.9:1 of the Code of Virginia;

(3) Submit to a search of the VDSS Child Protective Services Central Registry which results in no founded complaint; and

(4) Not be debarred, suspended, or otherwise excluded from participating in federal health care programs, as listed on the federal List of Excluded Individuals/Entities (LEIE) database at http://www.olg.hhs.govfraud/exclusions/exclusions%20list.asp.

c. The services facilitator shall not be compensated for services provided to the individual enrolled in the waiver effective on the date in which the record check verifies that the services facilitator (i) has been convicted of barrier crimes described in § 32.1-162.9:1 of the Code of Virginia, (ii) has a founded complaint confirmed by the VDSS Child Protective Services Central Registry, or (iii) is found to be listed on LEIE.

d. Effective January 11, 2016, consumer-directed services facilitators shall possess the required degree and experience, as follows:

(1) Prior to enrollment by the department as a consumer-directed services facilitator, all new applicants shall possess, at a minimum, either an associate's degree or higher from an accredited college in a health or human services field or be a registered nurse currently licensed to practice in Commonwealth and possess a minimum of two years of satisfactory direct care experience supporting individuals with disabilities or older adults; or

(2) Possess a bachelor's degree or higher in a non-health or human services field and have a minimum of three years of satisfactory direct care experience supporting individuals with disabilities or older adults.

Persons who are consumer-directed services facilitators prior to January 11, 2016, shall not be required to meet the degree and experience requirements of this subsection unless required to submit a new application to be a consumer-directed services facilitator after January 11, 2016.

e. Effective April 10, 2016, all consumer-directed services facilitators shall complete required training and competency assessments. Satisfactory competency assessment results shall be kept in the service facilitator's record.

(1) All new consumer-directed consumer directed services facilitators shall complete the DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80% prior to being approved as a consumer-directed services facilitator or being reimbursed for working with waiver individuals.

(2) Persons who are consumer-directed services facilitators prior to January 11, 2016, shall be required to complete the DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80% in order to continue being reimbursed for or working with

waiver individuals for the purpose of Medicaid reimbursement.

f. Failure to satisfy the competency assessment requirements and meet all other requirements shall result in a retraction of Medicaid payment or the termination of the provider agreement, or both.

g. Failure to satisfy the competency assessment requirements and meet all other requirements may also result in the termination of a CD services facilitator employed by or contracted with a Medicaid enrolled services facilitator provider.

h. As a component of the renewal of the Medicaid provider agreement, all CD services facilitators shall pass the competency assessment every five years and achieve a score of at least 80%.

i. The consumer-directed services facilitator shall have access to a computer with secure Internet access that meets the requirements of 45 CFR Part 164 for the electronic exchange of information. Electronic exchange of information shall include, for example, checking individual eligibility, submission of service authorizations, submission of information to the fiscal employer agent, and billing for services.

j. The consumer-directed services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities must be documented on the consumer-directed services facilitator's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

(1) Knowledge of:

(a) Types of functional limitations and health problems that may occur in older adults or individuals with disabilities, as well as strategies to reduce limitations and health problems;

(b) Physical care that may be required by older adults or individuals with disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications that may be required by individuals who are elderly or individuals with disabilities that reduce the need for human help and improve safety;

(d) Various long-term care program requirements, including nursing facility and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care and respite services;

(e) Elderly or Disabled with Consumer-Direction Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(f) How to conduct assessments (including environmental, psychosocial, health, and functional factors) and their uses in services planning;

(g) Interviewing techniques;

(h) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed services, including hiring, training, managing, approving timesheets, and firing an aide;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with individuals, family/caregivers, and service providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing services to individuals who are elderly or individuals with disabilities; and

(d) Identifying services within the established services system to meet the individual's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(b) Demonstrate a positive regard for individuals and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively, orally and in writing; and

(f) Develop a rapport and communicate with individuals from diverse cultural backgrounds.

4. Initiation of services and service monitoring.

a. For consumer-directed model of service, the consumer-directed services facilitator shall make an initial comprehensive home visit at the primary residence of the individual to collaborate with the individual or the individual's family/caregiver, as appropriate, to identify the individual's needs, assist in the development of the plan of care with the waiver individual and individual's family/caregiver, as appropriate, and provide EOR management training within seven days of the initial visit. The initial comprehensive home visit shall be conducted only once upon the individual's entry into consumer-directed services. If the individual changes, either voluntarily or involuntarily, the consumer-directed services facilitator, the new consumer-directed services facilitator shall complete a reassessment visit in lieu of a comprehensive visit.

b. After the initial comprehensive visit, the services facilitator shall continue to monitor the plan of care on an as-needed basis, but in no event less frequently than every 90 days for personal care, and shall conduct face-to-face meetings with the individual and may include the family/caregiver. The services facilitator shall review the utilization of consumer-directed respite services, either every six months or upon the use of half of the approved respite services hours, whichever comes first, and shall conduct a face-to-face meeting with the individual and may include the family/caregiver. Such monitoring reviews shall be documented in the individual's medical record.

c. During visits with the individual, the services facilitator shall observe, evaluate, and consult with the individual/EOR and may include the family/caregiver, and document the adequacy and appropriateness of CD services with regard to the individual's current functioning, cognitive status, and medical and social needs. The consumer-directed services facilitator's written summary of the visit shall include at a minimum:

(1) Discussion with the waiver individual or family/caregiver/EOR, as appropriate, concerning whether the service is adequate to meet the waiver individual's needs;

(2) Any suspected abuse, neglect, or exploitation and to whom it was reported;

(3) Any special tasks performed by the consumer-directed attendant and the consumer-directed attendant's qualifications to perform these tasks;

(4) The individual's or family/caregiver's/EOR's satisfaction with the service;

(5) Any hospitalization or change in medical condition, functioning, or cognitive status; and

(6) The presence or absence of the consumer-directed attendant in the home during the consumer-directed services facilitator's visit.

5. DMAS, its designated contractor, or the fiscal/employer agent shall request a criminal record check and a check of the VDSS Child Protective Services Central Registry if the waiver individual is a minor child, in accordance with 12VAC30-120-930, pertaining to the consumer-directed attendant on behalf of the waiver individual and report findings of these records checks to the EOR.

6. The consumer-directed services facilitator shall review and verify copies of timesheets during the face-to-face visits to ensure that the hours approved in the plan of care are being provided and are not exceeded. If discrepancies are identified, the consumer-directed services facilitator shall discuss these with the individual or EOR to resolve discrepancies and shall notify the fiscal/employer agent. The consumer-directed services facilitator shall also review the individual's plan of care to ensure that the individual's needs are being met. Failure to conduct such reviews and verifications of timesheets and maintain the documentation of these reviews shall result in DMAS' recovery of payments made.

7. The services facilitator shall maintain records of each individual that he serves. At a minimum, these records shall contain:

a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

b. The personal care plan of care. Such plans shall be reviewed by the provider every 90 days, annually, and more often as needed, and modified as appropriate. The respite services plan of care shall be included in the record and shall be reviewed by the provider every six months or when half of the approved respite service hours have been used whichever comes first. For the annual review and in cases where either the personal care or respite care plan of care is modified, the plan of care shall be reviewed with the individual, the family/caregiver, and EOR, as appropriate;

c. The consumer-directed services facilitator's dated notes documenting any contacts with the individual or family/caregiver/EOR and visits to the individual;

d. All contacts, including correspondence, made to and from the individual, EOR, family/caregiver, physicians, DMAS, the designated service authorization contractor, formal and informal services provider, and all other professionals related to the individual's Medicaid services or medical care;

e. All employer management training provided to the individual or EOR to include, but not necessarily be limited to (i) the individual's or EOR's receipt of training on their responsibilities for the accuracy of the consumer-directed attendant's timesheets and (ii) the availability of the Consumer-Directed Waiver Services Employer Manual available at www.dmas.virginia.gov;

f. All documents signed by the individual or EOR, as appropriate, that acknowledge the responsibilities as the employer; and

g. The DMAS required forms as specified in the agency's waiver-specific guidance document.

Failure to maintain all required documentation shall result in DMAS' action to recover payments made. Repeated instances of failure to maintain documentation may result in cancellation of the Medicaid provider agreement.

8. In instances when the individual is consistently unable to either hire or retain the employment of a personal care consumer-directed attendant to provide consumer-directed personal care or respite services such as, for example, a pattern of discrepancies with the consumer-directed attendant's timesheets, the consumer-directed services

facilitator shall make arrangements, after conferring with DMAS, to have the needed services transferred to an agency-directed services provider of the individual's choice or discuss with the individual or family/caregiver/EOR, or both, other service options.

9. Waiver individual, family/caregiver, and EOR responsibilities.

a. The individual shall be authorized for the consumer-directed model of service, and the EOR shall successfully complete EOR management training performed by the consumer-directed services facilitator before the individual or EOR shall be permitted to hire a consumer-directed attendant for Medicaid reimbursement. Any services that may be rendered by a consumer-directed attendant prior to authorization by Medicaid shall not be eligible for reimbursement by Medicaid. Individuals who are eligible for consumer-directed services shall have the capability to hire and train their own consumer-directed attendants and supervise the consumer-directed attendants' performances. In lieu of handling their consumer-directed attendants themselves, individuals may have a family/caregiver or other designated person serve as the EOR on their behalf. The EOR shall be prohibited from also being the Medicaid-reimbursed consumer-directed attendant for respite or personal care or the services facilitator for the individual.

b. Individuals shall acknowledge that they will not knowingly continue to accept consumer-directed personal care services when the service is no longer appropriate or necessary for their care needs and shall inform the services facilitator of their change in care needs. If the consumer-directed model of services continue after services have been terminated by DMAS or the designated service authorization contractor, the individual shall be held liable for the consumer-directed attendant compensation.

c. Individuals shall notify the consumer-directed services facilitator of all hospitalizations or admissions, for example, to any rehabilitation facility rehabilitation unit or nursing facility as consumer-directed attendant services shall not be reimbursed during such admissions. Failure to do so may result in the individual being held liable for the consumer-directed employee compensation.

I. Personal emergency response systems. In addition to meeting the general conditions and requirements for home and community-based waiver participating providers as specified in 12VAC30-120-930, PERS providers must also meet the following qualifications and requirements:

1. A PERS provider shall be either, but not necessarily limited to, a personal care agency, a durable medical equipment provider, a licensed home health provider, or a PERS manufacturer. All such providers shall have the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring;

2. The PERS provider shall provide an emergency response center with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS equipment 24 hours a day, 365 or 366 days per year, as appropriate; (ii) determining whether an emergency exists; and (iii) notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help;

3. A PERS provider shall comply with all applicable Virginia statutes, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed;

4. The PERS provider shall have the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the waiver individual's notification of a malfunction of the console unit, activating devices, or medication monitoring unit and shall provide temporary equipment, as may be necessary for the waiver individual's health, safety, and welfare, while the original equipment is being repaired or replaced;

5. The PERS provider shall install, consistent with the manufacturer's instructions, all PERS equipment into a waiver individual's functioning telephone line or system within seven days of the request of such installation unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider shall furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider shall test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit shall have priority over the telephone connected to the console unit should the telephone be off the hook or in use when the unit is activated;

7. A PERS provider shall maintain a data record for each waiver individual at no additional cost to DMAS or the waiver individual. The record shall document all of the following:

a. Delivery date and installation date of the PERS equipment;

b. Waiver individual/caregiver signature verifying receipt of the PERS equipment;

c. Verification by a test that the PERS device is operational and the waiver individual is still using it monthly or more frequently as needed;

d. Waiver individual contact information, to be updated annually or more frequently as needed, as provided by the individual or the individual's caregiver/EOR;

e. A case log documenting the waiver individual's utilization of the system, all contacts, and all communications with the individual, caregiver/EOR, and responders;

f. Documentation that the waiver individual is able to use the PERS equipment through return demonstration; and

g. Copies of all equipment checks performed on the PERS unit;

8. The PERS provider shall have backup monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. The emergency response activator shall be capable of being activated either by breath, touch, or some other means and shall be usable by waiver individuals who are visually or hearing impaired or physically disabled. The emergency response communicator shall be capable of operating without external power during a power failure at the waiver individual's home for a minimum period of 24 hours. The emergency response console unit shall also be able to self-disconnect and redial the backup monitoring site without the waiver individual resetting the system in the event it cannot get its signal accepted at the response center;

10. PERS providers shall be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It shall be the PERS provider's responsibility to ensure that the monitoring agency and the monitoring agency's equipment meet the following requirements. The PERS provider shall be capable of simultaneously responding to multiple signals for help from the waiver individuals' PERS equipment. The PERS provider's equipment shall include the following:

a. A primary receiver and a backup receiver, which shall be independent and interchangeable;

b. A backup information retrieval system;

c. A clock printer, which shall print out the time and date of the emergency signal, the waiver individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

d. A backup power supply;

e. A separate telephone service;

f. A toll-free number to be used by the PERS equipment in order to contact the primary or backup response center; and

g. A telephone line monitor, which shall give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds;

11. The PERS provider shall maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

12. The PERS provider shall document and furnish within 30 days of the action taken, a written report for each emergency signal that results in action being taken on behalf of the waiver individual. This excludes test signals or activations made in error. This written report shall be furnished to (i) the personal care provider; (ii) the respite care provider; (iii) the CD services facilitation provider; (iv) in cases where the individual only receives ADHC services, to the ADCC provider; or (v) to the transition coordinator for the service in which the individual is enrolled; and

13. The PERS provider shall obtain and keep on file a copy of the most recently completed DMAS-225 form. Until the PERS provider obtains a copy of the DMAS-225 form, the PERS provider shall clearly document efforts to obtain the completed DMAS-225 form from the personal care provider, respite care provider, CD services facilitation provider, or ADCC provider.

J. Assistive technology (AT) and environmental modification (EM) services. AT and EM shall be provided only to waiver individuals who also participate in the MFP demonstration program by providers who have current provider participation agreements with DMAS.

1. AT shall be rendered by providers having a current provider participation agreement with DMAS as durable medical equipment and supply providers. An independent, professional consultation shall be obtained, as may be required, from qualified professionals who are knowledgeable of that item for each AT request prior to approval by either DMAS or the Srv Auth contractor and may include training on such AT by the qualified professional. Independent, professional consultants shall include, but shall not necessarily be limited to, speech/language therapists, physical therapists, occupational therapists, physicians, behavioral therapists, certified rehabilitation specialists, or rehabilitation engineers. Providers that supply AT for a waiver individual may not perform assessment/consultation, write specifications, or inspect the AT for that individual. Providers of services shall not be (i) spouses of the waiver individual or (ii) parents (biological, adoptive, foster, or legal guardian) of the waiver individual. AT shall be delivered within 60 days from the start date of the authorization. The AT provider shall ensure that the AT functions properly.

2. In addition to meeting the general conditions and requirements for home and community-based waiver services participating providers as specified in 12VAC30-120-930, as appropriate, environmental modifications shall be provided in accordance with all applicable state or local building codes by contractors who have provider agreements with DMAS. Providers of services shall not be

(i) the spouse of the waiver individual or (ii) the parent (biological, adoptive, foster, or legal guardian) of the waiver individual who is a minor child. Modifications shall be completed within a year of the start date of the authorization.

3. Providers of AT and EM services shall not be permitted to recover equipment that has been provided to waiver individuals whenever the provider has been charged, by either DMAS or its designated service authorization agent, with overpayments and is therefore being required to return payments to DMAS.

K. Transition coordination. This service shall be provided consistent with 12VAC30-120-2000 and 12VAC30-120-2010.

L. Transition services. This service shall be provided consistent with 12VAC30-120-2000 and 12VAC30-120-2010.

12VAC30-120-1020. Covered services; limits on covered services.

A. Covered services in the ID Waiver include: assistive technology, companion services (both consumer-directed and agency-directed), crisis stabilization, day support, environmental modifications, personal assistance services (both consumer-directed and agency-directed), personal emergency response systems (PERS), prevocational services, residential support services, respite services (both consumer-directed and agency-directed), services facilitation (only for consumer-directed services), skilled nursing services, supported employment, therapeutic consultation, and transition services.

1. There shall be separate supporting documentation for each service and each shall be clearly differentiated in documentation and corresponding billing.

2. The need of each individual enrolled in the waiver for each service shall be clearly set out in the Individual Support Plan containing the providers' Plans for Supports.

3. Claims for payment that are not supported by their related documentation shall be subject to recovery by DMAS or its designated contractor as a result of utilization reviews or audits.

4. Individuals enrolled in the waiver may choose between the agency-directed model of service delivery or the consumer-directed model when DMAS makes this alternative model available for care. The only services provided in this waiver that permit the consumer-directed model of service delivery shall be: (i) personal assistance services; (ii) respite services; and (iii) companion services. An individual enrolled in the waiver shall not receive consumer-directed services if at least one of the following conditions exists:

(a) The individual enrolled in the waiver is younger than 18 years of age or is unable to be the employer of record and no one else can assume this role;

(b) The health, safety, or welfare of the individual enrolled in the waiver cannot be assured or a back-up emergency plan cannot be developed; or

(c) The individual enrolled in the waiver has medication or skilled nursing needs or medical/behavioral conditions that cannot be safely met via the consumer-directed model of service delivery.

5. Voluntary/involuntary disenrollment of consumer-directed services. Either voluntary or involuntary disenrollment of consumer-directed services may occur. In either voluntary or involuntary situations, the individual enrolled in the waiver shall be permitted to select an agency from which to receive his personal assistance, respite, or companion services.

a. An individual who has chosen consumer direction may choose, at any time, to change to the agency-directed services model as long as he continues to qualify for the specific services. The services facilitator or case manager, as appropriate, shall assist the individual with the change of services from consumer-directed to agency-directed.

b. The services facilitator or case manager, as appropriate, shall initiate involuntary disenrollment from consumer direction of the individual enrolled in the waiver when any of the following conditions occur:

(1) The health, safety, or welfare of the individual enrolled in the waiver is at risk;

(2) The individual or EOR, as appropriate, demonstrates consistent inability to hire and retain a personal assistant; or

(3) The individual or EOR, as appropriate, is consistently unable to manage the assistant, as may be demonstrated by, but shall not necessarily be limited to, a pattern of serious discrepancies with timesheets.

c. Prior to involuntary disenrollment, the services facilitator or case manager, as appropriate, shall:

(1) Verify that essential training has been provided to the individual or EOR, as appropriate, to improve the problem condition or conditions;

(2) Document in the individual's record the conditions creating the necessity for the involuntary disenrollment and actions taken by the services facilitator or case manager, as appropriate;

(3) Discuss with the individual or the EOR, as appropriate, the agency directed option that is available and the actions needed to arrange for such services while providing a list of potential providers; and

(4) Provide written notice to the individual and EOR, as appropriate, of the right to appeal, pursuant to 12VAC30-110, such involuntary termination of consumer direction. Such notice shall be given at least 10 business days prior to the effective date of this action.

d. If the services facilitator initiates the involuntary disenrollment from consumer direction, then he shall inform the case manager.

6. All requests for this waiver's services shall be submitted to either DMAS or the service authorization contractor for service (prior) authorization.

B. Assistive technology (AT). Service description. This service shall entail the provision of specialized medical equipment and supplies including those devices, controls, or appliances, specified in the Individual Support Plan but which are not available under the State Plan for Medical Assistance, that (i) enable individuals to increase their abilities to perform activities of daily living (ADLs); (ii) enable individuals to perceive, control, or communicate with the environment in which they live; or (iii) are necessary for life support, including the ancillary supplies and equipment necessary to the proper functioning of such technology.

1. Criteria. In order to qualify for these services, the individual shall have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in the individual's home, vehicle, community activity setting, or day program to specifically improve the individual's personal functioning. AT shall be covered in the least expensive, most cost-effective manner.

2. Service units and service limitations. AT shall be available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. Only the AT services set out in the Plan for Supports shall be covered by DMAS. AT shall be prior authorized by the state-designated agency or its contractor for each calendar year with no carry-over across calendar years.

a. The maximum funded expenditure per individual for all AT covered procedure codes (combined total of AT items and labor related to these items) shall be $5,000 per calendar year for individuals regardless of waiver for which AT is approved. The service unit shall always be one for the total cost of all AT being requested for a specific timeframe.

b. Costs for AT shall not be carried over from calendar year to calendar year and shall be prior authorized by the state-designated agency or its contractor each calendar year. AT shall not be approved for purposes of convenience of the caregiver or restraint of the individual.

3. An independent professional consultation shall be obtained from staff knowledgeable of that item for each AT request prior to approval by the state-designated agency or its contractor. Equipment, supplies, or technology not available as durable medical equipment through the State Plan may be purchased and billed as AT as long as the request for such equipment, supplies, or technology is documented and justified in the individual's Plan for Supports, recommended by the case manager, prior authorized by the state-designated agency or its contractor, and provided in the least expensive, most cost-effective manner possible.

4. All AT items to be covered shall meet applicable standards of manufacture, design, and installation.

5. The AT provider shall obtain, install, and demonstrate, as necessary, such AT prior to submitting his claim to DMAS for reimbursement. The provider shall provide all warranties or guarantees from the AT's manufacturer to the individual and family/caregiver, as appropriate.

6. AT providers shall not be the spouse or parents of the individual enrolled in the waiver.

C. Companion (both consumer-directed and agency-directed) services. Service description. These services provide nonmedical care, socialization, or support to an adult (age 18 or older). Companions may assist or support the individual enrolled in the waiver with such tasks as meal preparation, community access and activities, laundry, and shopping, but companions do not perform these activities as discrete services. Companions may also perform light housekeeping tasks (such as bed-making, dusting and vacuuming, laundry, grocery shopping, etc.) when such services are specified in the individual's Plan for Supports and essential to the individual's health and welfare in the context of providing nonmedical care, socialization, or support, as may be needed in order to maintain the individual's home environment in an orderly and clean manner. Companion services shall be provided in accordance with a therapeutic outcome in the Plan for Supports and shall not be purely recreational in nature. This service may be provided and reimbursed either through an agency-directed or a consumer-directed model.

1. In order to qualify for companion services, the individual enrolled in the waiver shall have demonstrated a need for assistance with IADLs, light housekeeping (such as cleaning the bathroom used by the individual, washing his dishes, preparing his meals, or washing his clothes), community access, reminders for medication self-administration, or support to assure safety. The provision of companion services shall not entail routine hands-on care.

2. Individuals choosing the consumer-directed option shall meet requirements for consumer direction as described herein.

3. Service units and service limitations.

a. The unit of service for companion services shall be one hour and the amount that may be included in the Plan for Supports shall not exceed eight hours per 24-hour day regardless of whether it is an agency-directed or consumer-directed service model, or both.

b. A companion shall not be permitted to provide nursing care procedures such as, but not limited to, ventilators, tube feedings, suctioning of airways, or wound care.

c. The hours that can be authorized shall be based on documented individual need. No more than two unrelated individuals who are receiving waiver services and who live in the same home shall be permitted to share the authorized work hours of the companion.

4. This consumer directed service shall be available to individuals enrolled in the waiver who receive congregate residential services. These services shall be available when individuals enrolled in the waiver are not receiving congregate residential services such as, but not necessarily limited to, when they are on vacation or are visiting with family members.

D. Crisis stabilization. Service description. These services shall involve direct interventions that provide temporary intensive services and support that avert emergency psychiatric hospitalization or institutional placement of individuals with ID who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situation. Crisis stabilization services shall have two components: (i) intervention and (ii) supervision. Crisis stabilization services shall include, as appropriate, neuropsychiatric, psychiatric, psychological, and other assessments and stabilization techniques, medication management and monitoring, behavior assessment and positive behavioral support, and intensive service coordination with other agencies and providers. This service shall be designed to stabilize the individual and strengthen the current living situation, so that the individual remains in the community during and beyond the crisis period.

1. These services shall be provided to:

a. Assist with planning and delivery of services and supports to enable the individual to remain in the community;

b. Train family/caregivers and service providers in positive behavioral supports to maintain the individual in the community; and

c. Provide temporary crisis supervision to ensure the safety of the individual and others.

2. In order to receive crisis stabilization services, the individual shall:

a. Meet at least one of the following: (i) the individual shall be experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning; (ii) the individual shall be experiencing an increase in extreme emotional distress; (iii) the individual shall need continuous intervention to maintain stability; or (iv) the individual shall be causing harm to himself or others; and

b. Be at risk of at least one of the following: (i) psychiatric hospitalization; (ii) emergency ICF/ID placement; (iii) immediate threat of loss of a community service due to a severe situational reaction; or (iv) causing harm to self or others.

3. Service units and service limitations. Crisis stabilization services shall only be authorized following a documented face-to-face assessment conducted by a qualified mental retardation professional (QMRP).

a. The unit for either intervention or supervision of this covered service shall be one hour. This service shall only be authorized in 15-day increments but no more than 60 days in a calendar year shall be approved. The actual service units per episode shall be based on the documented clinical needs of the individual being served. Extension of services, beyond the 15-day limit per authorization, shall only be authorized following a documented face-to-face reassessment conducted by a QMRP.

b. Crisis stabilization services shall be provided directly in the following settings, but shall not be limited to:

(1) The home of an individual who lives with family, friends, or other primary caregiver or caregivers;

(2) The home of an individual who lives independently or semi-independently to augment any current services and supports; or

(3) Either a community-based residential program, a day program, or a respite care setting to augment ongoing current services and supports.

4. Crisis supervision shall be an optional component of crisis stabilization in which one-to-one supervision of the individual who is in crisis shall be provided by agency staff in order to ensure the safety of the individual and others in the environment. Crisis supervision may be provided as a component of crisis stabilization only if clinical or behavioral interventions allowed under this service are also provided during the authorized period. Crisis supervision must be provided one-to-one and face-to-face with the individual. Crisis supervision, if provided as a part of this service, shall be separately billed in hourly service units.

5. Crisis stabilization services shall not be used for continuous long-term care. Room, board, and general supervision shall not be components of this service.

6. If appropriate, the assessment and any reassessments may be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

E. Day support services. Service description. These services shall include skill-building, supports, and safety supports for the acquisition, retention, or improvement of self-help, socialization, community integration, and adaptive skills. These services shall be typically offered in a nonresidential setting that provides opportunities for peer interactions, community integration, and enhancement of social networks. There shall be two levels of this service: (i) intensive and (ii) regular.

1. Criteria. For day support services, individuals shall demonstrate the need for skill-building or supports offered

primarily in settings other than the individual's own residence that allows him an opportunity for being a productive and contributing member of his community.

2. Types of day support. The amount and type of day support included in the individual's Plan for Supports shall be determined by what is required for that individual. There are two types of day support: center-based, which is provided primarily at one location/building; or noncenter-based, which is provided primarily in community settings. Both types of day support may be provided at either intensive or regular levels.

3. Levels of day support. There shall be two levels of day support, intensive and regular. To be authorized at the intensive level, the individual shall meet at least one of the following criteria: (i) the individual requires physical assistance to meet the basic personal care needs (such as but not limited to toileting, eating/feeding); (ii) the individual requires additional, ongoing support to fully participate in programming and to accomplish the individual's desired outcomes due to extensive disability-related difficulties; or (iii) the individual requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral support activities shall be required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation. Individuals not meeting these specified criteria for intensive day support shall be provided with regular day support.

4. Service units and service limitations.

a. This service shall be limited to 780 blocks, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. A block shall be defined as a period of time from one hour through three hours and 59 minutes. Two blocks are defined as four hours to six hours and 59 minutes. Three blocks are defined as seven hours to nine hours and 59 minutes. If this service is used in combination with prevocational, or group supported employment services, or both, the combined total units for day support, prevocational, or group supported employment services shall not exceed 780 units, or its equivalent under the DMAS fee schedule, per Individual Support Plan year.

b. Day support services shall be billed according to the DMAS fee schedule.

c. Day support shall not be regularly or temporarily provided in an individual's home setting or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from the state-designated agency or its contractor.

d. Noncenter-based day support services shall be separate and distinguishable from either residential support services or personal assistance services. The supporting documentation shall provide an estimate of the amount of day support required by the individual.

5. Service providers shall be reimbursed only for the amount and level of day support services included in the individual's approved Plan for Supports based on the setting, intensity, and duration of the service to be delivered.

F. Environmental modifications (EM). Service description. This service shall be defined, as set out in 12VAC30-120-1000, as those physical adaptations to the individual's primary home, primary vehicle, or work site that shall be required by the individual's Individual Support Plan, that are necessary to ensure the health and welfare of the individual, or that enable the individual to function with greater independence. Environmental modifications reimbursed by DMAS may only be made to an individual's work site when the modification exceeds the reasonable accommodation requirements of the Americans with Disabilities Act. Such adaptations may include, but shall not necessarily be limited to, the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the individual. Modifications may be made to a primary automotive vehicle in which the individual is transported if it is owned by the individual, a family member with whom the individual lives or has consistent and ongoing contact, or a nonrelative who provides primary long-term support to the individual and is not a paid provider of services.

1. In order to qualify for these services, the individual enrolled in the waiver shall have a demonstrated need for equipment or modifications of a remedial or medical benefit offered in an individual's primary home, the primary vehicle used by the individual, community activity setting, or day program to specifically improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.

2. Service units and service limitations.

a. Environmental modifications shall be provided in the least expensive manner possible that will accomplish the modification required by the individual enrolled in the waiver and shall be completed within the calendar year consistent with the Plan of Supports' requirements.

b. The maximum funded expenditure per individual for all EM covered procedure codes (combined total of EM items and labor related to these items) shall be $5,000 per calendar year for individuals regardless of waiver for which EM is approved. The service unit shall always be one, for the total cost of all EM being requested for a specific timeframe.

EM shall be available to individuals enrolled in the waiver who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. EM shall be prior authorized by

the state-designated agency or its contractor for each calendar year with no carry-over across calendar years.

c. Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards.

d. Providers shall be reimbursed for their actual cost of material and labor and no additional mark-ups shall be permitted.

e. Providers of EM services shall not be the spouse or parents of the individual enrolled in the waiver.

f. Excluded from coverage under this waiver service shall be those adaptations or improvements to the home that are of general utility and that are not of direct medical or remedial benefit to the individual enrolled in the waiver, such as, but not necessarily limited to, carpeting, roof repairs, and central air conditioning. Also excluded shall be modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act. Adaptations that add to the total square footage of the home shall be excluded from this service. Except when EM services are furnished in the individual's own home, such services shall not be provided to individuals who receive residential support services.

3. Modifications shall not be prior authorized or covered to adapt living arrangements that are owned or leased by providers of waiver services or those living arrangements that are sponsored by a DBHDS-licensed residential support provider. Specifically, provider-owned or leased settings where residential support services are furnished shall already be compliant with the Americans with Disabilities Act.

4. Modifications to a primary vehicle that shall be specifically excluded from this benefit shall be:

a. Adaptations or improvements to the vehicle that are of general utility and are not of direct medical or remedial benefit to the individual;

b. Purchase or lease of a vehicle; and

c. Regularly scheduled upkeep and maintenance of a vehicle, except upkeep and maintenance of the modifications that were covered under this waiver benefit.

G. Personal assistance services. Service description. These services may be provided either through an agency-directed or consumer-directed (CD) model.

1. Personal assistance shall be provided to individuals in the areas of activities of daily living (ADLs), instrumental activities of daily living (IADLs), access to the community, monitoring of self-administered medications or other medical needs, monitoring of health status and physical condition, and work-related personal assistance. Such services, as set out in the Plan for Supports, may be provided and reimbursed in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. When specified, such supportive services may include assistance with IADLs. Personal assistance shall not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service shall not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

2. Criteria. In order to qualify for personal assistance, the individual shall demonstrate a need for assistance with ADLs, community access, self-administration of medications or other medical needs, or monitoring of health status or physical condition.

3. Service units and service limitations.

a. The unit of service shall be one hour.

b. Each individual, family, or caregiver shall have a back-up plan for the individual's needed supports in case the personal assistant does not report for work as expected or terminates employment without prior notice.

c. Personal assistance shall not be available to individuals who (i) receive congregate residential services or who live in assisted living facilities, (ii) would benefit from ADL or IADL skill development as identified by the case manager, or (iii) receive comparable services provided through another program or service.

d. The hours to be authorized shall be based on the individual's need. No more than two unrelated individuals who live in the same home shall be permitted to share the authorized work hours of the assistant.

H. Personal Emergency Response System (PERS). Service description. This service shall be a service that monitors individuals' safety in their homes, and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individuals' home telephone system. PERS may also include medication monitoring devices.

1. PERS may be authorized when there is no one else in the home with the individual enrolled in the waiver who is competent or continuously available to call for help in an emergency.

2. Service units and service limitations.

a. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, monitoring, and adjustments of the PERS. A unit of service is the one-month rental price set by DMAS. The one-time installation of the unit shall include installation, account activation, individual and caregiver instruction, and removal of PERS equipment.

b. PERS services shall be capable of being activated by a remote wireless device and shall be connected to the individual's telephone system. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

c. PERS services shall not be used as a substitute for providing adequate supervision for the individual enrolled in the waiver.

I. Prevocational services. Service description. These services shall be intended to prepare an individual enrolled in the waiver for paid or unpaid employment but shall not be job-task oriented. Prevocational services shall be provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services. Activities included in this service shall not be directed at teaching specific job skills but at underlying habilitative outcomes such as accepting supervision, regular job attendance, task completion, problem solving, and safety. There shall be two levels of this covered service: (i) intensive and (ii) regular.

1. In order to qualify for prevocational services, the individual enrolled in the waiver shall have a demonstrated need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

2. Service units and service limitations. Billing shall be in accordance with the DMAS fee schedule.

a. This service shall be limited to 780 blocks, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. A block shall be defined as a period of time from one hour through three hours and 59 minutes. Two blocks are defined as four hours to six hours and 59 minutes. Three blocks are defined as seven hours to nine hours and 59 minutes. If this service is used in combination with day support or group-supported employment services, or both, the combined total units for prevocational services, day support and group supported employment services shall not exceed 780 blocks, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. A block shall be defined as a period of time from one hour through three hours and 59 minutes.

b. Prevocational services may be provided in center-based or noncenter-based settings. Center-based settings means services shall be provided primarily at one location or building and noncenter-based means services shall be provided primarily in community settings.

c. For prevocational services to be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (such as, but not limited to, toileting, eating/feeding); (ii) require additional, ongoing support to fully participate in services and to accomplish desired outcomes due to extensive disability-related difficulties; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral support activities shall be required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation. Individuals not meeting these specified criteria for intensive prevocational services shall be provided with regular prevocational services.

3. There shall be documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA due to his age, documentation shall be required only for lack of DRS funding. When these services are provided through these alternative funding sources, the Plan for Supports shall not authorize prevocational services as waiver expenditures.

4. Prevocational services shall only be provided when the individual's compensation for work performed is less than 50% of the minimum wage.

J. Residential support services. Service description. These services shall consist of skill-building, supports, and safety supports, provided primarily in an individual's home or in a licensed or approved residence, that enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Service providers shall be reimbursed only for the amount and type of residential support services that are included in the individual's approved Plan for Supports. There shall be two types of this service: congregate residential support and in-home supports. Residential support services shall be authorized for Medicaid reimbursement in the Plan for Supports only when the individual requires these services and when such needs exceed the services included in the individual's room and board arrangements with the service provider, or if these services exceed supports provided by the family/caregiver. Only in exceptional instances shall residential support services be routinely reimbursed up to a 24-hour period.

1. Criteria.

a. In order for DMAS to reimburse for congregate residential support services, the individual shall have a demonstrated need for supports to be provided by staff who shall be paid by the residential support provider.

b. To qualify for this service in a congregate setting, the individual shall have a demonstrated need for continuous skill-building, supports, and safety supports for up to 24 hours per day.

c. Providers shall participate as requested in the completion of the DBHDS-approved SIS form or its approved substitute form.

d. The residential support Plan for Supports shall indicate the necessary amount and type of activities required by the individual, the schedule of residential support services, and the total number of projected hours per week of waiver reimbursed residential support.

e. In-home residential supports shall be supplemental to the primary care provided by the individual, his family member or members, and other caregivers. In-home residential supports shall not replace this primary care.

f. In-home residential supports shall be delivered on an individual basis, typically for less than a continuous 24-hour period. This service shall be delivered with a one-to-one staff-to-individual ratio except when skill building supports require interaction with another person.

2. Service units and service limitations. Total billing shall not exceed the amount authorized in the Plan for Supports. The provider must maintain documentation of the date and times that services have been provided, and specific circumstances that prevented provision of all of the scheduled services, should that occur.

a. This service shall be provided on an individual-specific basis according to the Plan for Supports and service setting requirements;

b. Congregate residential support shall not be provided to any individual enrolled in the waiver who receives personal assistance services under the ID Waiver or other residential services that provide a comparable level of care. Residential support services shall be permitted to be provided to the individual enrolled in the waiver in conjunction with respite services for unpaid caregivers;

c. Room, board, and general supervision shall not be components of this service;

d. This service shall not be used solely to provide routine or emergency respite care for the family/caregiver with whom the individual lives; and

e. Medicaid reimbursement shall be available only for residential support services provided when the individual is present and when an enrolled Medicaid provider is providing the services.

K. Respite services. Service description. These services may be provided either through an agency-directed or consumer-directed (CD) model.

1. Respite services shall be provided to individuals in the areas of activities of daily living (ADLs), instrumental activities of daily living (IADLs), access to the community, monitoring of self-administered medications or other medical needs, and monitoring of health status and physical condition in the absence of the primary caregiver or to relieve the primary caregiver from the duties of care-giving. Such services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. When specified, such supportive services may include assistance with IADLs. Respite assistance shall not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service shall not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

2. Respite services shall be those that are normally provided by the individual's family or other unpaid primary caregiver. These covered services shall be furnished on a short-term, episodic, or periodic basis because of the absence of the unpaid caregiver or need for relief of the unpaid caregiver or caregivers who normally provide care for the individual.

3. Criteria.

a. In order to qualify for respite services, the individual shall demonstrate a need for assistance with ADLs, community access, self-administration of medications or other medical needs, or monitoring of health status or physical condition.

b. Respite services shall only be offered to individuals who have an unpaid primary caregiver or caregivers who require temporary relief. Such need for relief may be either episodic, intermittent, or periodic.

4. Service units and service limitations.

a. The unit of service shall be one hour. Respite services shall be limited to 480 hours per individual per state fiscal year. If an individual changes waiver programs, this same maximum number of respite hours shall apply. No additional respite hours beyond the 480 maximum limit shall be approved for payment. Individuals who are receiving respite services in this waiver through both the agency-directed and ~~CD~~ consumer-directed models shall not exceed 480 hours per year combined.

b. Each individual, family, or caregiver shall have a back-up plan for the individual's care in case the respite assistant does not report for work as expected or terminates employment without prior notice.

c. Respite services shall not be provided to relieve staff of either group homes, pursuant to 12VAC35-105-20, or assisted living facilities, pursuant to 22VAC40-72-10, where residential supports are provided in shifts. Respite services shall not be provided for DMAS reimbursement by adult foster care providers for an individual residing in that foster home.

d. Skill development shall not be provided with respite services.

e. The hours to be authorized shall be based on the individual's need. No more than two unrelated individuals who live in the same home shall be permitted to share the authorized work hours of the respite assistant.

5. Consumer-directed and agency-directed respite services shall meet the same standards for service limits and authorizations.

L. Services facilitation and consumer-directed service model. Service description. Individuals enrolled in the waiver may be approved to select ~~consumer-directed~~ the consumer-directed (CD) ~~models~~ model of service delivery, absent any of the specified conditions that precludes such a choice, and may also receive support from a services facilitator. ~~Persons functioning as services facilitators shall be enrolled Medicaid providers.~~ This shall be a separate waiver service to be used in conjunction with ~~CD~~ consumer-directed personal assistance, respite, or companion services and shall not be covered for an individual absent one of these consumer directed services.

1. Services facilitators shall train individuals enrolled in the waiver, family/caregiver, or EOR, as appropriate, to direct (such as select, hire, train, supervise, and authorize timesheets of) their own assistants who are rendering personal assistance, respite services, and companion services.

2. The services facilitator shall assess the individual's particular needs for a requested ~~CD~~ consumer-directed service, assisting in the development of the Plan for Supports, provide management training for the individual or the EOR, as appropriate, on his responsibilities as employer, and provide ongoing support of the ~~CD~~ consumer-directed model of services. The service authorization for receipt of consumer directed services shall be based on the approved Plan for Supports.

3. The services facilitator shall make an initial comprehensive home visit to collaborate with the individual and the individual's family/caregiver, as appropriate, to identify the individual's needs, assist in the development of the Plan for Supports with the individual and the individual's family/caregiver, as appropriate, and provide employer management training to the individual and the family/caregiver, as appropriate, on his responsibilities as an employer, and providing ongoing support of the consumer-directed model of services. Individuals or EORs who are unable to receive employer management training at the time of the initial visit shall receive management training within seven days of the initial visit.

a. The initial comprehensive home visit shall be completed only once upon the individual's entry into the ~~CD~~ consumer-directed model of service regardless of the number or type of ~~CD~~ consumer-directed services that an individual requests.

b. If an individual changes services facilitators, the new services facilitator shall complete a reassessment visit in lieu of a comprehensive visit.

c. This employer management training shall be completed before the individual or EOR may hire an assistant who is to be reimbursed by DMAS.

4. After the initial visit, the services facilitator shall continue to monitor the individual's Plan for Supports quarterly (i.e., every 90 days) and more often as-needed. If ~~CD~~ consumer-directed respite services are provided, the services facilitator shall review the utilization of ~~CD~~ consumer-directed respite services either every six months or upon the use of 240 respite services hours, whichever comes first.

5. A face-to-face meeting shall occur between the services facilitator and the individual at least every six months to reassess the individual's needs and to ensure appropriateness of any ~~CD~~ consumer-directed services received by the individual. During these visits with the individual, the services facilitator shall observe, evaluate, and consult with the individual, EOR, and the individual's family/caregiver, as appropriate, for the purpose of documenting the adequacy and appropriateness of ~~CD~~ consumer-directed services with regard to the individual's current functioning and cognitive status, medical needs, and social needs. The services facilitator's written summary of the visit shall include, but shall not necessarily be limited to:

a. Discussion with the individual and EOR or family/caregiver, as appropriate, whether the particular consumer directed service is adequate to meet the individual's needs;

b. Any suspected abuse, neglect, or exploitation and to whom it was reported;

c. Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;

d. Individual's and EOR's or family/caregiver's, as appropriate, satisfaction with the assistant's service;

e. Any hospitalization or change in medical condition, functioning, or cognitive status;

f. The presence or absence of the assistant in the home during the services facilitator's visit; and

g. Any other services received and the amount.

6. The services facilitator, during routine visits, shall also review and verify timesheets as needed to ensure that the number of hours approved in the Plan for Supports is not exceeded. If discrepancies are identified, the services facilitator shall discuss these with the individual or the EOR to resolve discrepancies and shall notify the fiscal/employer agent. If an individual is consistently identified as having discrepancies in his timesheets, the services facilitator shall contact the case manager to resolve the situation. Failure to review and verify

timesheets and maintain documentation of such reviews shall be subject to DMAS' recovery of payments made in accordance with 12VAC30-80-130.

7. The services facilitator shall maintain a record of each individual containing elements as set out in 12VAC30-120-1060.

8. The services facilitator shall be available during standard business hours to the individual or EOR by telephone.

9. If a services facilitator is not selected by the individual, the individual or the family/caregiver serving as the EOR shall perform all of the duties and meet all of the requirements, including documentation requirements, identified for services facilitation. However, the individual or family/caregiver shall not be reimbursed by DMAS for performing these duties or meeting these requirements.

10. If an individual enrolled in consumer-directed services has a lapse in services facilitator duties for more than 90 consecutive days, and the individual or family/caregiver is not willing or able to assume the service facilitation duties, then the case manager shall notify DMAS or its designated ~~prior~~ service authorization contractor and the consumer-directed services shall be discontinued once the required 10 days notice of this change has been observed. The individual whose consumer-directed services have been discontinued shall have the right to appeal this discontinuation action pursuant to 12VAC30-110. The individual shall be given his choice of an agency for the alternative personal care, respite, or companion services that he was previously obtaining through consumer direction.

11. The ~~CD~~ consumer-directed services facilitator, who is to be reimbursed by DMAS, shall not be the individual enrolled in the waiver, the individual's case manager, a direct service provider, the individual's spouse, a parent, including stepparents and legal guardians, of the individual who is a minor child, or the EOR who is employing the assistant/companion.

12. The services facilitator shall document what constitutes the individual's back-up plan in case the assistant/companion does not report for work as expected or terminates employment without prior notice.

13. Should the assistant/companion not report for work or terminate his employment without notice, then the services facilitator shall, upon the individual's or EOR's request, provide management training to ensure that the individual or the EOR is able to recruit and employ a new assistant/companion.

14. The limits and requirements for individuals' selection of consumer directed services shall be as follows:

a. In order to be approved to use the ~~CD~~ consumer-directed model of services, the individual enrolled in the waiver, or if the individual is unable, the designated EOR, shall have the capability to hire, train, and fire his own assistants and supervise the assistants' performance. Case managers shall document in the Individual Support Plan the individual's choice for the ~~CD~~ consumer-directed model and whether or not the individual chooses services facilitation. The case manager shall document in this individual's record that the individual can serve as the EOR or if there is a need for another person to serve as the EOR on behalf of the individual.

b. An individual enrolled in the waiver who is younger than 18 years of age shall be required to have an adult responsible for functioning in the capacity of an EOR.

c. Specific employer duties shall include checking references of assistants, determining that assistants meet specified qualifications, timely and accurate completion of hiring packets, training the assistants, supervising assistants' performance, and submitting complete and accurate timesheets to the fiscal/employer agent on a consistent and timely basis.

M. Skilled nursing services. Service description. These services shall be provided for individuals enrolled in the waiver having serious medical conditions and complex health care needs who do not meet home health criteria but who require specific skilled nursing services which cannot be provided by non-nursing personnel. Skilled nursing services may be provided in the individual's home or other community setting on a regularly scheduled or intermittent basis. It may include consultation, nurse delegation as appropriate, oversight of direct support staff as appropriate, and training for other providers.

1. In order to qualify for these services, the individual enrolled in the waiver shall have demonstrated complex health care needs that require specific skilled nursing services as ordered by a physician that cannot be otherwise provided under the Title XIX State Plan for Medical Assistance, such as under the home health care benefit.

2. Service units and service limitations. Skilled nursing services shall be rendered by a registered nurse or licensed practical nurse as defined in 12VAC30-120-1000 and shall be provided in 15-minute units in accordance with the DMAS fee schedule as set out in DMAS guidance documents. The services shall be explicitly detailed in a Plan for Supports and shall be specifically ordered by a physician as medically necessary.

N. Supported employment services. Service description. These services shall consist of ongoing supports that enable individuals to be employed in an integrated work setting and may include assisting the individual to locate a job or develop a job on behalf of the individual, as well as activities needed to sustain paid work by the individual including skill-building supports and safety supports on a job site. These services shall be provided in work settings where persons without disabilities are employed. Supported employment services shall be especially designed for individuals with

developmental disabilities, including individuals with ID, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential (i.e., the individual's ability to perform work).

1. Supported employment services shall be available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disabilities need ongoing support to perform in a work setting. The individual's assessment and Individual Support Plan must clearly reflect the individual's need for employment-related skill building.

2. Supported employment shall be provided in one of two models: individual or group.

a. Individual supported employment shall be defined as support, usually provided one-on-one by a job coach to an individual in a supported employment position. For this service, reimbursement of supported employment shall be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual enrolled in the waiver is in the supported employment situation.

b. Group supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities who work in an enclave, work crew, bench work, or in an entrepreneurial model.

3. Criteria.

a. Only job development tasks that specifically pertain to the individual shall be allowable activities under the ID Waiver supported employment service and DMAS shall cover this service only after determining that this service is not available from DRS for this individual enrolled in the waiver.

b. In order to qualify for these services, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports and, that because of his disability, he needs ongoing support to perform in a work setting.

c. Providers shall participate as requested in the completion of the DBHDS-approved assessment.

d. The Plan for Supports shall document the amount of supported employment required by the individual.

4. Service units and service limitations.

a. Service providers shall be reimbursed only for the amount and type of supported employment included in the individual's Plan for Supports, which must be based on the intensity and duration of the service delivered.

b. The unit of service for individual job placement supported employment shall be one hour. This service shall be limited to 40 hours per week per individual.

c. Group models of supported employment shall be billed according to the DMAS fee schedule.

d. Group supported employment shall be limited to 780 blocks per individual, or its equivalent under the DMAS fee schedule, per Individual Support Plan year. A block shall be defined as a period of time from one hour through three hours and 59 minutes. Two blocks are defined as four hours to six hours and 59 minutes. Three blocks are defined as seven hours to nine hours and 59 minutes. If this service is used in combination with prevocational and day support services, the combined total unit blocks for these three services shall not exceed 780 units, or its equivalent under the DMAS fee schedule, per Individual Support Plan year.

O. Therapeutic consultation. Service description. This service shall provide expertise, training, and technical assistance in any of the following specialty areas to assist family members, caregivers, and other service providers in supporting the individual enrolled in the waiver. The specialty areas shall be (i) psychology, (ii) behavioral consultation, (iii) therapeutic recreation, (iv) speech and language pathology, (v) occupational therapy, (vi) physical therapy, and (vii) rehabilitation engineering. The need for any of these services shall be based on the individuals' Individual Support Plans, and shall be provided to those individuals for whom specialized consultation is clinically necessary and who have additional challenges restricting their abilities to function in the community. Therapeutic consultation services may be provided in individuals' homes, and in appropriate community settings (such as licensed or approved homes or day support programs) as long as they are intended to facilitate implementation of individuals' desired outcomes as identified in their Individual Support Plans.

1. In order to qualify for these services, the individual shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the Individual Support Plan cannot be implemented effectively and efficiently without such consultation as provided by this covered service.

a. The individual's therapeutic consultation Plan for Supports shall clearly reflect the individual's needs, as documented in the assessment information, for specialized consultation provided to family/caregivers and providers in order to effectively implement the Plan for Supports.

b. Therapeutic consultation services shall not include direct therapy provided to individuals enrolled in the waiver and shall not duplicate the activities of other services that are available to the individual through the State Plan for Medical Assistance.

2. The unit of service shall be one hour. The services must be explicitly detailed in the Plan for Supports. Travel time, written preparation, and telephone communication shall be considered as in-kind expenses within this service and shall not be reimbursed as separate items. Therapeutic

consultation shall not be billed solely for purposes of monitoring the individual.

3. Only behavioral consultation in this therapeutic consultation service may be offered in the absence of any other waiver service when the consultation is determined to be necessary.

P. Transition services. Transition services, as defined at and controlled by 12VAC30-120-2000 and 12VAC30-120-2010, provide for set-up expenses for qualifying applicants. The ID case manager shall coordinate with the discharge planner to ensure that ID Waiver eligibility criteria shall be met. Transition services shall be prior authorized by DMAS or its designated agent in order for reimbursement to occur.

12VAC30-120-1060. Participation standards for provision of services; providers' requirements.

A. The required documentation for residential support services, day support services, supported employment services, and prevocational support shall be as follows:

1. A completed copy of the DBHDS-approved SIS assessment form or its approved alternative form during the phase in period.

2. A Plan for Supports containing, at a minimum, the following elements:

a. The individual's strengths, desired outcomes, required or desired supports or both, and skill-building needs;

b. The individual's support activities to meet the identified outcomes;

c. The services to be rendered and the schedule of such services to accomplish the above desired outcomes and support activities;

d. A timetable for the accomplishment of the individual's desired outcomes and support activities;

e. The estimated duration of the individual's needs for services; and

f. The provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports.

3. Documentation indicating that the Plan for Supports' desired outcomes and support activities have been reviewed by the provider quarterly, annually, and more often as needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the Plan for Supports is modified, the Plan for Supports shall be reviewed with and agreed to by the individual enrolled in the waiver and the individual's family/caregiver, as appropriate.

4. All correspondence to the individual and the individual's family/caregiver, as appropriate, the case manager, DMAS, and DBHDS.

5. Written documentation of contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual.

B. The required documentation for personal assistance services, respite services, and companion services shall be as set out in this subsection. The agency provider holding the service authorization or the services facilitator, or the EOR in the absence of a services facilitator, shall maintain records regarding each individual who is receiving services. At a minimum, these records shall contain:

1. A copy of the completed DBHDS-approved SIS assessment (or its approved alternative during the phase in period) and, as needed, an initial assessment completed by the supervisor or services facilitator prior to or on the date services are initiated.

2. A Plan for Supports, that contains, at a minimum, the following elements:

a. The individual's strengths, desired outcomes, required or desired supports;

b. The individual's support activities to meet these identified outcomes;

c. Services to be rendered and the frequency of such services to accomplish the above desired outcomes and support activities; and

d. For the agency-directed model, the provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports. For the consumer-directed model, the identifying information for the assistant or assistants and the Employer of Record.

3. Documentation indicating that the Plan for Supports' desired outcomes and support activities have been reviewed by the provider quarterly, annually, and more often as needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the Plan for Supports is modified, the Plan for Supports shall be reviewed with and agreed to by the individual enrolled in the waiver and the individual's family/caregiver, as appropriate.

4. The companion services supervisor or CD services facilitator, as required by 12VAC30-120-1020, shall document in the individual's record in a summary note following significant contacts with the companion and home visits with the individual:

a. Whether companion services continue to be appropriate;

b. Whether the plan is adequate to meet the individual's needs or changes are indicated in the plan;

c. The individual's satisfaction with the service;

d. The presence or absence of the companion during the supervisor's visit;

e. Any suspected abuse, neglect, or exploitation and to whom it was reported; and

f. Any hospitalization or change in medical condition, and functioning or cognitive status;

5. All correspondence to the individual and the individual's family/caregiver, as appropriate, the case manager, DMAS, and DBHDS;

6. Contacts made with family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual; and

7. Documentation provided by the case manager as to why there are no providers other than family members available to render respite assistant care if this service is part of the individual's Plan for Supports.

C. The required documentation for assistive technology, environmental modifications (EM), and Personal Emergency Response Systems (PERS) shall be as follows:

1. The appropriate IDOLS documentation, to be completed by the case manager, may serve as the Plan for Supports for the provision of AT, EM, and PERS services. A rehabilitation engineer may be involved for AT or EM services if disability expertise is required that a general contractor may not have. The Plan for Supports/IDOL shall include justification and explanation that a rehabilitation engineer is needed, if one is required. The IDOL shall be submitted to the state-designated agency or its contractor in order for service authorization to occur;

2. Written documentation for AT services regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as DME and supplies, and that it is not available from a DME provider;

3. AT documentation of the recommendation for the item by a qualified professional;

4. Documentation of the date services are rendered and the amount of service that is needed;

5. Any other relevant information regarding the device or modification;

6. Documentation in the case management record of notification by the designated individual or individual's representative family/caregiver of satisfactory completion or receipt of the service or item; and

7. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

D. Assistive technology (AT). In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, AT shall be provided by DMAS-enrolled durable medical equipment (DME) providers or DMAS-enrolled CSBs/BHAs with an ID Waiver provider agreement to provide AT. DME shall be provided in accordance with 12VAC30-50-165.

E. Companion services (both agency-directed and consumer-directed). In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, companion service providers shall meet the following qualifications:

1. For the agency-directed model, the provider shall be licensed by DBHDS as either a residential service provider, supportive in-home residential service provider, day support service provider, or respite service provider or shall meet the DMAS criteria to be a personal care/respite care provider.

2. For the consumer-directed model, there may be a services facilitator (or person serving in this capacity) meeting the requirements found in 12VAC30-120-1020.

3. Companion qualifications. Persons functioning as companions shall meet the following requirements:

a. Be at least 18 years of age;

b. Be able to read and write English to the degree required to function in this capacity and possess basic math skills;

c. Be capable of following a Plan for Supports with minimal supervision and be physically able to perform the required work;

d. Possess a valid social security number that has been issued by the Social Security Administration to the person who is to function as the companion;

e. Be capable of aiding in IADLs; and

f. Receive an annual tuberculosis screening.

4. Persons rendering companion services for reimbursement by DMAS shall not be the individual's spouse, parent (whether biological or adoptive), stepparent, or legal guardian. Other family members living under the same roof as the individual being served may not provide companion services unless there is objective written documentation completed by the services facilitator, or the EOR when the individual does not select services facilitation, as to why there are no other providers available to provide companion services.

a. Family members who are approved to be reimbursed by DMAS to provide companion services shall meet all of the companion training and ability qualifications as other persons who are not family members. Family members who are approved to be reimbursed for providing this service shall not be the family member/caregiver/EOR who is directing the individual's care.

b. Companion services shall not be provided by adult foster care providers or any other paid caregivers for an individual residing in that foster care home.

5. For the agency-directed model, companions shall be employees of enrolled providers that have participation agreements with DMAS to provide companion services. Providers shall be required to have a companion services supervisor to monitor companion services. The companion

services supervisor shall have a bachelor's degree in a human services field and have at least one year of experience working in the ID field, or be a licensed practical nurse (LPN) or a registered nurse (RN) with at least one year of experience working in the ID field. Such LPNs and RNs shall have the appropriate current licenses to either practice nursing in the Commonwealth or have multi-state licensure privilege as defined herein.

6. The companion services supervisor or services facilitator, as appropriate, shall conduct an initial home visit prior to initiating companion services to document the efficacy and appropriateness of such services and to establish a Plan for Supports for the individual enrolled in the waiver. The companion services supervisor or services facilitator must provide quarterly follow-up home visits to monitor the provision of services under the agency-directed model and semi-annually (every six months) under the consumer-directed model or more often as needed.

7. In addition to the requirements in subdivisions 1 through 6 of this subsection the companion record for agency-directed service providers must also contain:

a. The specific services delivered to the individual enrolled in the waiver by the companion, dated the day of service delivery, and the individual's responses;

b. The companion's arrival and departure times;

c. The companion's weekly comments or observations about the individual enrolled in the waiver to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

d. The companion's and individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

8. Consumer-directed model companion record. In addition to the requirements outlined in this subsection, the companion record for services facilitators must contain:

a. The services facilitator's dated notes documenting any contacts with the individual enrolled in the waiver and the individual's family/caregiver, as appropriate, and visits to the individual's home;

b. Documentation of training provided to the companion by the individual or EOR, as appropriate;

c. Documentation of all employer management training provided to the individual enrolled in the waiver or the EOR, including the individual's and the EOR's, as appropriate, receipt of training on their legal responsibility for the accuracy and timeliness of the companion's timesheets; and

d. All documents signed by the individual enrolled in the waiver and the EOR that acknowledge their responsibilities and legal liabilities as the companion's or companions' employer, as appropriate.

F. Crisis stabilization services. In addition to the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, the following crisis stabilization provider qualifications shall apply:

1. A crisis stabilization services provider shall be licensed by DBHDS as a provider of either outpatient services, crisis stabilization services, residential services with a crisis stabilization track, supportive residential services with a crisis stabilization track, or day support services with a crisis stabilization track.

2. The provider shall employ or use QMRPs, licensed mental health professionals, or other qualified personnel who have demonstrated competence to provide crisis stabilization and related activities to individuals with ID who are experiencing serious psychiatric or behavioral problems.

3. To provide the crisis supervision component, providers must be licensed by DBHDS as providers of residential services, supportive in-home residential services, or day support services. Documentation of providers' qualifications shall be maintained for review by DBHDS and DMAS staff or DMAS' designated agent.

4. A Plan for Supports must be developed or revised and submitted to the case manager for submission to DBHDS within 72 hours of the requested start date for authorization.

5. Required documentation in the individual's record. The provider shall maintain a record regarding each individual enrolled in the waiver who is receiving crisis stabilization services. At a minimum, the record shall contain the following:

a. Documentation of the face-to-face assessment and any reassessments completed by a QMRP;

b. A Plan for Supports that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports;

(2) Services to be rendered and the frequency of services to accomplish these desired outcomes and support activities;

(3) A timetable for the accomplishment of the individual's desired outcomes and support activities;

(4) The estimated duration of the individual's needs for services; and

(5) The provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports; and

c. Documentation indicating the dates and times of crisis stabilization services, the amount and type of service or services provided, and specific information regarding the individual's response to the services and supports as agreed to in the Plan for Supports.

G. Day support services. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, day support providers, for both intensive and regular service levels, shall meet the following additional requirements:

1. The provider of day support services must be specifically licensed by DBHDS as a provider of day support services. (12VAC 35-105-20)

2. In addition to licensing requirements, day support staff shall also have training in the characteristics of intellectual disabilities and the appropriate interventions, skill building strategies, and support methods for individuals with intellectual disabilities and such functional limitations. All providers of day support services shall pass an objective, standardized test of skills, knowledge, and abilities approved by DBHDS and administered according to DBHDS' defined procedures. (See www.dbhds.virginia.gov for further information.)

3. Documentation confirming the individual's attendance and amount of time in services and specific information regarding the individual's response to various settings and supports as agreed to in the Plan for Supports. An attendance log or similar document must be maintained that indicates the individual's name, date, type of services rendered, staff signature and date, and the number of service units delivered, in accordance with the DMAS fee schedule.

4. Documentation indicating whether the services were center-based or noncenter-based shall be included on the Plan for Supports.

5. In instances where day support staff may be required to ride with the individual enrolled in the waiver to and from day support services, the day support staff transportation time may be billed as day support services and documentation maintained, provided that billing for this time does not exceed 25% of the total time spent in day support services for that day.

6. If intensive day support services are requested, documentation indicating the specific supports and the reasons they are needed shall be included in the Plan for Supports. For ongoing intensive day support services, there shall be specific documentation of the ongoing needs and associated staff supports.

H. Environmental modifications. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, environmental modifications shall be provided in accordance with all applicable federal, state, or local building codes and laws by CSBs/BHAs contractors or DMAS-enrolled providers.

I. Personal assistance services (both consumer-directed and agency directed models). In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, personal assistance providers shall meet additional provider requirements:

1. For the agency-directed model, services shall be provided by an enrolled DMAS personal care provider or by a residential services provider licensed by the DBHDS that is also enrolled with DMAS. All agency-directed personal assistants shall pass an objective standardized test of skills, knowledge, and abilities approved by DBHDS that must be administered according to DBHDS' defined procedures.

2. For the CD model, services shall meet the requirements found in 12VAC30-120-1020.

3. For DBHDS-licensed residential services providers, a residential supervisor shall provide ongoing supervision of all personal assistants.

4. For DMAS-enrolled personal care providers, the provider shall employ or subcontract with and directly supervise an RN or an LPN who shall provide ongoing supervision of all assistants. The supervising RN or LPN shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/ID, or nursing facility.

5. For agency-directed services, the supervisor, or for CD services the services facilitator, shall make a home visit to conduct an initial assessment prior to the start of services for all individuals enrolled in the waiver requesting, and who have been approved to receive, personal assistance services. The supervisor or services facilitator, as appropriate, shall also perform any subsequent reassessments or changes to the Plan for Supports. All changes that are indicated for an individual's Plan for Supports shall be reviewed with and agreed to by the individual and, if appropriate, the family/caregiver.

6. The supervisor or services facilitator, as appropriate, shall make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits shall be every 30 to 90 days under the agency-directed model and semi-annually (every six months) under the CD model of services, depending on the individual's needs.

7. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor (for

agency-directed services) or the individual or the employer of record (EOR) (for the CD model) shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

8. Qualifications for consumer directed personal assistants. The assistant shall:

a. Be 18 years of age or older and possess a valid social security number that has been issued by the Social Security Administration to the person who is to function as the attendant;

b. Be able to read and write English to the degree necessary to perform the tasks expected and possess basic math skills;

c. Have the required skills and physical abilities to perform the services as specified in the individual's Plan for Supports;

d. Be willing to attend training at the individual's and EOR's, as appropriate, request;

e. Understand and agree to comply with the DMAS' ID Waiver requirements as contained in this part (12VAC30-120-1000 et seq.); and

f. Receive an annual tuberculosis screening.

9. Additional requirements for DMAS-enrolled (agency-directed) personal care providers.

a. Personal assistants shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who have disabilities, including intellectual/developmental disabilities, as ensured by the provider prior to being assigned to support an individual, and have the required skills and training to perform the services as specified in the individual's Plan for Supports and related supporting documentation. Personal assistants' required training, as further detailed in the applicable provider manual, shall be met in one of the following ways:

(1) Registration with the Board of Nursing as a certified nurse aide;

(2) Graduation from an approved educational curriculum as listed by the Board of Nursing; or

(3) Completion of the provider's educational curriculum, as conducted by a licensed RN who shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ~~ICF/ID~~ ICF/IID, or nursing facility.

b. Assistants shall have a satisfactory work record, as evidenced by two references from prior job experiences, if applicable, including no evidence of possible abuse, neglect, or exploitation of elderly persons, children, or adults with disabilities.

10. Personal assistants to be paid by DMAS shall not be the parents, stepparents, or legal guardians of individuals enrolled in the waiver who are minor children or the individuals' spouses.

a. Payment shall not be made for services furnished by other ~~family members~~ family members/caregivers living under the same roof as the individual enrolled in the waiver receiving services unless there is objective written documentation completed by the services facilitator, or the case manager when the individual does not select services facilitation, as to why there are no other providers available to render the services.

b. ~~Family members~~ Family members/caregivers who are approved to be reimbursed for providing this service shall meet the same training and ability qualifications as all other personal assistants.

11. Provider inability to render services and substitution of assistants (agency-directed model).

a. When assistants are absent or otherwise unable to render scheduled supports to individuals enrolled in the waiver, the provider shall be responsible for ensuring that services continue to be provided to the affected individuals. The provider may either provide another assistant, obtain a substitute assistant from another provider if the lapse in coverage is to be less than two weeks in duration, or transfer the individual's services to another personal care or respite provider. The provider that has the service authorization to provide services to the individual enrolled in the waiver must contact the case manager to determine if additional, or modified, service authorization is necessary.

b. If no other provider is available who can supply a substitute assistant, the provider shall notify the individual and the individual's family/caregiver, as appropriate, and the case manager so that the case manager may find another available provider of the individual's choice.

c. During temporary, short-term lapses in coverage that are not expected to exceed approximately two weeks in duration, the following procedures shall apply:

(1) The service authorized provider shall provide the supervision for the substitute assistant;

(2) The provider of the substitute assistant shall send a copy of the assistant's daily documentation signed by the assistant, the individual, and the individual's family/caregiver, as appropriate, to the provider having the service authorization; and

(3) The service authorized provider shall bill DMAS for services rendered by the substitute assistant.

d. If a provider secures a substitute assistant, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS' requirements. The two

providers involved shall be responsible for negotiating the financial arrangements of paying the substitute assistant.

12. For the agency-directed model, the personal assistant record shall contain:

a. The specific services delivered to the individual enrolled in the waiver by the assistant, dated the day of service delivery, and the individual's responses;

b. The assistant's arrival and departure times;

c. The assistant's weekly comments or observations about the individual enrolled in the waiver to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

d. The assistant's and individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that services during that week have been rendered.

13. The records of individuals enrolled in the waiver who are receiving personal assistance services in a congregate residential setting (because skill building services are no longer appropriate or desired for the individual), must contain:

a. The specific services delivered to the individual enrolled in the waiver, dated the day that such services were provided, the number of hours as outlined in the Plan for Supports, the individual's responses, and observations of the individual's physical and emotional condition; and

b. At a minimum, monthly verification by the residential supervisor of the services and hours rendered and billed to DMAS.

14. For the consumer-directed model, the services facilitator's record shall contain, at a minimum:

a. Documentation of all employer management training provided to the individual enrolled in the waiver and the EOR including the individual or the individual's family/caregiver, as appropriate, and EOR, as appropriate, receipt of training on their legal responsibilities for the accuracy and timeliness of the assistant's timesheets; and

b. All documents signed by the individual enrolled in the waiver and the EOR, as appropriate, which acknowledge the responsibilities as the employer.

J. Personal Emergency Response Systems. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, PERS providers shall also meet the following qualifications:

1. A PERS provider shall be either: (i) an enrolled personal care agency; (ii) an enrolled durable medical equipment provider; (iii) a licensed home health provider; or (iv) a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring services.

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of receiving signals for help from an individual's PERS equipment 24-hours a day, 365, or 366, days per year as appropriate, of determining whether an emergency exists, and of notifying an emergency response organization or an emergency responder that the PERS service individual needs emergency help.

3. A PERS provider must comply with all applicable Virginia statutes, applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed.

4. The PERS provider shall have the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication-monitoring unit.

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line or cellular system and must furnish all supplies necessary to ensure that the PERS system is installed and working properly.

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit shall have priority over the telephone connected to the console unit should the phone be off the hook or in use when the unit is activated.

7. A PERS provider shall install, test, and demonstrate to the individual and family/caregiver, as appropriate, the PERS system before submitting his claim for services to DMAS.

8. A PERS provider shall maintain a data record for each PERS individual at no additional cost to DMAS or DBHDS. The record must document the following:

a. Delivery date and installation date of the PERS;

b. Individual or family/caregiver, as appropriate, signature verifying receipt of PERS device;

c. Verification by a monthly, or more frequently as needed, test that the PERS device is operational;

d. Updated and current individual responder and contact information, as provided by the individual, the individual's family/caregiver, or case manager; and

e. A case log documenting the individual's utilization of the system and contacts and communications with the

individual, family/caregiver, case manager, and responders.

9. The PERS provider shall have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals.

10. All PERS equipment shall be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard for home health care signaling equipment in Underwriter's Laboratories Safety Standard 1637, Standard for Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006. The UL listing mark on the equipment shall be accepted as evidence of the equipment's compliance with such standard. The PERS device shall be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the individual enrolled in the waiver or family/caregiver, as appropriate.

11. A PERS provider shall instruct the individual, family/caregiver, and responders in the use of the PERS service.

12. The emergency response activator shall be able to be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24-hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit must also be able to self-disconnect and redial the back-up monitoring site without the individual or family/caregiver resetting the system in the event it cannot get its signal accepted at the response center.

13. The PERS provider shall be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It shall be the PERS provider's responsibility to ensure that the monitoring function and the agency's equipment meets the following requirements. The PERS provider must be capable of simultaneously responding to signals for help from multiple individuals' PERS equipment. The PERS provider's equipment shall include the following:

a. A primary receiver and a back-up receiver, which must be independent and interchangeable;

b. A back-up information retrieval system;

c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

d. A back-up power supply;

e. A separate telephone service;

f. A toll-free number to be used by the PERS equipment in order to contact the primary or back-up response center; and

g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

14. The PERS provider shall maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment, emergency response protocols, and recordkeeping and reporting procedures.

15. The PERS provider shall document and furnish within 30 days of the action taken a written report to the case manager for each emergency signal that results in action being taken on behalf of the individual, excluding test signals or activations made in error.

K. Prevocational services. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-120-1040, prevocational providers shall also meet the following qualifications:

1. The provider of prevocational services shall be a vendor of either extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DBHDS as a provider of day support services. Both licensee groups must also be enrolled with DMAS.

2. In addition to licensing requirements, prevocational staff shall also have training in the characteristics of ID and the appropriate interventions, skill building strategies, and support methods for individuals with ID and such functional limitations. All providers of prevocational services shall pass an objective, standardized test of skills, knowledge, and abilities approved by DBHDS and administered according to DBHDS' defined procedures. (See www.dbhds.virginia.gov for further information.)

3. Preparation and maintenance of documentation confirming the individual's attendance and amount of time in services and specific information regarding the individual's response to various settings and supports as agreed to in the Plan for Supports. An attendance log or similar document must be maintained that indicates the individual's name, date, type of services rendered, staff signature and date, and the number of service units delivered, in accordance with the DMAS fee schedule.

4. Preparation and maintenance of documentation indicating whether the services were center-based or noncenter-based shall be included on the Plan for Supports.

5. In instances where prevocational staff may be required to ride with the individual enrolled in the waiver to and

from prevocational services, the prevocational staff transportation time (actual time spent in transit) may be billed as prevocational services and documentation maintained, provided that billing for this time does not exceed 25% of the total time spent in prevocational services for that day.

6. If intensive prevocational services are requested, documentation indicating the specific supports and the reasons they are needed shall be included in the Plan for Supports. For ongoing intensive prevocational services, there shall be specific documentation of the ongoing needs and associated staff supports.

7. Preparation and maintenance of documentation indicating that prevocational services are not available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA).

L. Residential support services.

1. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040 and in order to be reimbursed by DMAS for rendering these services, the provider of residential services shall have the appropriate DBHDS residential license (12VAC35-105).

2. Residential support services may also be provided in adult foster care homes approved by local department of social services' offices pursuant to 22VAC40-771-20.

3. In addition to licensing requirements, provider personnel rendering residential support services shall participate in training in the characteristics of ID and appropriate interventions, skill building strategies, and support methods for individuals who have diagnoses of ID and functional limitations. See www.dbhds.virginia.gov for information about such training. All providers of residential support services must pass an objective, standardized test of skills, knowledge, and abilities approved by DBHDS and administered according to DBHDS' defined procedures.

4. Provider professional documentation shall confirm the individual's participation in the services and provide specific information regarding the individual's responses to various settings and supports as set out in the Plan for Supports.

M. Respite services (both consumer-directed and agency-directed models). In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, respite services providers shall meet additional provider requirements:

1. For the agency-directed model, services shall be provided by an enrolled DMAS respite care provider or by a residential services provider licensed by the DBHDS that is also enrolled by DMAS. In addition, respite services may be provided by a DBHDS-licensed respite services provider or a local department of social services-approved foster care home for children or by an adult foster care provider that is also enrolled by DMAS.

2. For the CD model, services shall meet the requirements found in Services Facilitation, 12VAC30-120-1020.

3. For DBHDS-licensed residential or respite services providers, a residential or respite supervisor shall provide ongoing supervision of all respite assistants.

4. For DMAS-enrolled respite care providers, the provider shall employ or subcontract with and directly supervise an RN or an LPN who will provide ongoing supervision of all assistants. The supervising RN or LPN must have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/ID, or nursing facility.

5. For agency-directed services, the supervisor, or for CD services the services facilitator, shall make a home visit to conduct an initial assessment prior to the start of services for all individuals enrolled in the waiver requesting respite services. The supervisor or services facilitator, as appropriate, shall also perform any subsequent reassessments or changes to the Plan for Supports.

6. The supervisor or services facilitator, as appropriate, shall make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits shall be every 30 to 90 days under the agency-directed model and semi-annually (every six months) under the CD model of services, depending on the individual's needs.

a. When respite services are not received on a routine basis, but are episodic in nature, the supervisor or services facilitator shall conduct the initial home visit with the respite assistant immediately preceding the start of services and make a second home visit within the respite service authorization period. The supervisor or services facilitator, as appropriate, shall review the use of respite services either every six months or upon the use of 240 respite service hours, whichever comes first.

b. When respite services are routine in nature, that is occurring with a scheduled regularity for specific periods of time, and offered in conjunction with personal assistance, the supervisory visit conducted for personal assistance may serve as the supervisory visit for respite services. However, the supervisor or services facilitator, as appropriate, shall document supervision of respite services separately. For this purpose, the same individual record shall be used with a separate section for respite services documentation.

7. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor (for

agency-directed services) or the individual or the EOR (for the CD model) shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

8. Qualifications for respite assistants. The assistant shall:

a. Be 18 years of age or older and possess a valid social security number that has been issued by the Social Security Administration to the person who is to function as the respite assistant;

b. Be able to read and write English to the degree necessary to perform the tasks expected and possess basic math skills; and

c. Have the required skills to perform services as specified in the individual's Plan for Supports and shall be physically able to perform the tasks required by the individual enrolled in the waiver.

9. Additional requirements for DMAS-enrolled (agency-directed) respite care providers.

a. Respite assistants shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who have disabilities, including intellectual/developmental disabilities, as ensured by the provider prior to being assigned to support an individual, and have the required skills and training to perform the services as specified in the individual's Plan for Supports and related supporting documentation. Respite assistants' required training, as further detailed in the applicable provider manual, shall be met in one of the following ways:

(1) Registration with the Board of Nursing as a certified nurse aide;

(2) Graduation from an approved educational curriculum as listed by the Board of Nursing; or

(3) Completion of the provider's educational curriculum, as taught by an RN who shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/ID, or nursing facility.

b. Assistants shall have a satisfactory work record, as evidenced by two references from prior job experiences including no evidence of possible abuse, neglect, or exploitation of any person regardless of age or disability.

10. Additional requirements for respite assistants for the CD option. The assistant shall:

a. Be willing to attend training at the individual's and the individual family/caregiver's, as appropriate, request;

b. Understand and agree to comply with the DMAS' ID Waiver requirements as contained in 12VAC30-120-1000 et seq.; and

c. Receive an annual tuberculosis screening.

11. Assistants to be paid by DMAS shall not be the parents (whether biological or adoptive), stepparents, or legal guardians of individuals enrolled in the waiver who are minor children or the individuals' spouses. Payment shall not be made for services furnished by other family members living under the same roof as the individual who is receiving services unless there is objective written documentation completed by the services facilitator, or the case manager when the individual does not select services facilitation, as to why there are no other providers available to render the services required by the individual. Family members who are approved to be reimbursed for providing this service shall meet the same training and ability qualifications as all other respite assistants. Family members who are approved to be reimbursed for providing this service shall not be the family member/caregiver/EOR who is directing the individual's care.

12. Provider inability to render services and substitution of assistants (agency-directed model).

a. When assistants are absent or otherwise unable to render scheduled supports to individuals enrolled in the waiver, the provider shall be responsible for ensuring that services continue to be provided to individuals. The provider may either provide another assistant, obtain a substitute assistant from another provider if the lapse in coverage is expected to be less than two weeks in duration, or transfer the individual's services to another respite care provider. The provider that has the service authorization to provide services to the individual enrolled in the waiver must contact the case manager to determine if additional, or modified, service authorization is necessary.

b. If no other provider is available who can supply a substitute assistant, the provider shall notify the individual and the individual's family/caregiver, as appropriate, and the case manager so that the case manager may find another available provider of the individual's choice.

c. During temporary, short-term lapses in coverage not to exceed two weeks in duration, the following procedures shall apply:

(1) The service authorized provider shall provide the supervision for the substitute assistant;

(2) The provider of the substitute assistant shall send a copy of the assistant's daily documentation signed by the assistant, the individual and the individual's family/caregiver, as appropriate, to the provider having the service authorization; and

(3) The service authorized provider shall bill DMAS for services rendered by the substitute assistant.

d. If a provider secures a substitute assistant, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met including documentation of services rendered by the substitute assistant and documentation that the substitute assistant's

qualifications meet DMAS' requirements. The two providers involved shall be responsible for negotiating the financial arrangements of paying the substitute assistant.

13. For the agency-directed model, the assistant record shall contain:

a. The specific services delivered to the individual enrolled in the waiver by the assistant, dated the day of service delivery, and the individual's responses;

b. The assistant's arrival and departure times;

c. The assistant's weekly comments or observations about the individual enrolled in the waiver to include observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

d. The assistant's and individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that services during that week have been rendered.

N. Services facilitation and consumer directed model of service delivery.

~~1. If the services facilitator is not an RN, the services facilitator shall inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed by the individual.~~

~~2.~~ 1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the services facilitator provider shall have sufficient resources to perform the required activities, including the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided. All CD services facilitators, whether employed by or contracted with a DMAS enrolled services facilitator provider, shall meet all of the qualifications set out in this subsection. To be enrolled, the services facilitator shall also meet the combination of work experience and relevant education set out in this subsection that indicate the possession of the specific knowledge, skills, and abilities to perform this function. The services facilitator shall maintain a record of each individual containing elements as set out in this section.

~~a. It is preferred that the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth or hold multi state licensure privilege pursuant to Chapter 30 (§ 54.1 3000 et seq.) of Title 54.1 of the Code of Virginia. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in a human service field working with individuals with intellectual disability or individuals with other developmental disabilities. Such knowledge, skills, and abilities must be documented on the provider's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:~~

a. If the services facilitator is not an RN, then, within 30 days from the start of such services, the services facilitator shall inform the primary health care provider for the individual enrolled in the waiver that consumer-directed services are being provided and request skilled nursing or other consultation as needed by the individual. Prior to contacting the primary health care provider, the services facilitator shall obtain the individual's written consent to make such contact or contacts. All such contacts and consultations shall be documented in the individual's medical record. Failure to document such contacts and consultations shall be subject to DMAS' recovery of payments made.

b. Effective January 11, 2016, prior to enrollment by DMAS as a consumer-directed services facilitator, applicants shall possess, at a minimum, either (i) an associate's degree from an accredited college in a health or human services field or be a registered nurse currently licensed to practice in Commonwealth and two years of satisfactory direct care experience supporting individuals with disabilities or older adults or children or (ii) a bachelor's degree in a non-health or human services field and a minimum of three years of satisfactory direct care experience supporting individuals with disabilities or older adults.

c. Effective January 11, 2016, all consumer-directed services facilitators, shall:

(1) Have a satisfactory work record as evidenced by two references from prior job experiences from any human services work; such references shall not include any evidence of abuse, neglect, or exploitation of the elderly or persons with disabilities or children**;**

(2) Submit to a criminal background check being conducted. The results of such check shall contain no record of conviction of barrier crimes as set forth in § 32.1-162.9:1 of the Code of Virginia. Proof that the criminal record check was conducted shall be maintained in the record of the services facilitator. In accordance with 12VAC30-80-130, DMAS shall not reimburse the provider for any services provided by a services facilitator who has been convicted of committing a barrier crime as set forth in § 32.1-162.9:1 of the Code of Virginia**;**

(3) Submit to a search of the DSS Child Protective Services Central Registry yielding no founded complaint; and

(4) Not be debarred, suspended, or otherwise excluded from participating in federal health care programs, as listed on the federal List of Excluded Individuals/Entities

(LEIE) database at http://www.olg.hhs.govfraud/exclusions/exclusions%20list.asp.

d. The services facilitator shall not be compensated for services provided to the waiver individual effective on the date in which the record check verifies that the services facilitator (i) has been convicted of a barrier crime described in § 32.1-162.9:1 of the Code of Virginia; (ii) has a founded complaint confirmed by the VDSS Child Protective Services Central Registry; or (iii) is found to be listed on the LEIE.

e. Effective April 10, 2016, all consumer-directed services facilitators providers and staff employed by consumer-directed services facilitator providers to function as a consumer-directed services facilitator shall complete the DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80% prior to being approved as a consumer-directed services facilitator or being reimbursed for working with waiver individuals. The competency assessment and all corresponding competency assessments shall be kept in the employee's record.

f. Failure to complete the competency assessment within the 90-day time limit and meet all other requirements shall result in a retraction of Medicaid payment or the termination of the provider agreement, or both, or require the termination of a consumer-directed services facilitator employed by or contracted with Medicaid enrolled services facilitators to render Medicaid covered services.

g. As a component of the renewal of the provider agreement, all consumer-directed services facilitators shall take and pass the competency assessment every five years and achieve a score of at least 80%.

h. The consumer-directed services facilitator shall have access to a computer with secure Internet access that meets the requirements of 45 CFR Part 164 for the electronic exchange of information. Electronic exchange of information shall include, for example, checking individual eligibility, submission of service authorizations, submission of information to the fiscal employer agent, and billing for services.

i. All consumer-directed services facilitators shall possess a demonstrable combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities shall be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview shall be documented. The knowledge, skills and abilities include:

(1) Knowledge of:

(a) Types of functional limitations and health problems that may occur in individuals with intellectual disability or individuals with other developmental disabilities, as well as strategies to reduce limitations and health problems;

(b) Physical assistance that may be required by individuals with intellectual disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications that may be required by individuals with intellectual disabilities that reduce the need for human help and improve safety;

(d) Various long-term care program requirements, including nursing home and ~~ICF/ID~~ ICF/IID placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance, respite, and companion services;

(e) ID Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(f) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in service planning;

(g) Interviewing techniques;

(h) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed personal assistance, companion and respite services, including hiring, training, managing, approving timesheets, and firing an assistant/companion;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with individuals and the individual's family/caregivers, as appropriate, and service providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing services to individuals with intellectual disabilities; and

(d) Identifying services within the established services system to meet the individual's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format, for individuals who have visual impairments;

(b) Demonstrate a positive regard for individuals and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively, orally and in writing; and

(f) Develop a rapport and communicate with individuals of diverse cultural backgrounds.

3. The services facilitator's record about the individual shall contain:

a. Documentation of all employer management training provided to the individual enrolled in the waiver and the EOR, as appropriate, including the individual's or the EOR's, as appropriate, receipt of training on their responsibility for the accuracy and timeliness of the assistant's timesheets; and

b. All documents signed by the individual enrolled in the waiver or the EOR, as appropriate, which acknowledge their legal responsibilities as the employer.

O. Skilled nursing services. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, participating skilled nursing providers shall meet the following qualifications:

1. Skilled nursing services shall be provided by either a DMAS-enrolled home health provider, or by a licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN who shall be contracted with or employed by DBHDS-licensed day support, respite, or residential providers.

2. Skilled nursing services providers shall not be the parents (natural, adoptive, or foster) or the legal guardians of individuals enrolled in the waiver who are minor children or the individual's spouse. Payment shall not be made for services furnished by other family members who are living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers available to provide the care. Other family members who are approved to provide skilled nursing services ~~must~~ shall meet the same skilled nursing provider requirements as all other licensed providers.

3. Foster care providers shall not be the skilled nursing services providers for the same individuals for whom they provide foster care.

4. Skilled nursing hours shall not be reimbursed while the individual enrolled in the waiver is receiving emergency care or is an inpatient in an acute care hospital or during emergency transport of the individual to such facilities. The attending RN or LPN shall not transport the individual enrolled in the waiver to such facilities.

5. Skilled nursing services may be ordered but shall not be provided simultaneously with respite or personal assistance services.

6. Reimbursement for skilled nursing services shall not be made for services that may be delivered prior to the attending physician's dated signature on the individual's support plan in the form of the physician's order.

7. DMAS shall not reimburse for skilled nursing services that may be rendered simultaneously through the Medicaid EPSDT benefit and the Medicare home health skilled nursing service benefit.

8. Required documentation. The provider shall maintain a record, for each individual enrolled in the waiver whom he serves, that contains:

a. A Plan for Supports that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports;

(2) Services to be rendered and the frequency of services to accomplish the above desired outcomes and support activities;

(3) The estimated duration of the individual's needs for services; and

(4) The provider staff responsible for the overall coordination and integration of the services specified in the Plan for Supports;

b. Documentation of all training, including the dates and times, provided to family/caregivers or staff, or both, including the person or persons being trained and the content of the training. Training of professional staff shall be consistent with the Nurse Practice Act;

c. Documentation of the physician's determination of medical necessity prior to services being rendered;

d. Documentation of nursing license/qualifications of providers;

e. Documentation indicating the dates and times of nursing services that are provided and the amount and type of service;

f. Documentation that the Plan for Supports was reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the CSB/BHA case manager. For the annual review and in cases where the Plan for Supports is modified, the Plan for Supports shall be reviewed with and agreed to by the individual and the family/caregiver, as appropriate; and

g. Documentation that the Plan for Supports has been reviewed by a physician within 30 days of initiation of services, when any changes are made to the Plan for Supports, and also reviewed and approved annually by a physician.

P. Supported employment services. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, supported employment provider qualifications shall include:

1. Group and individual supported employment shall be provided only by agencies that are DRS-vendors of supported employment services;

2. Documentation indicating that supported employment services are not available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA); and

3. In instances where supported employment staff are required to ride with the individual enrolled in the waiver to and from supported employment activities, the supported employment staff's transportation time (actual transport time) may be billed as supported employment, provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day.

Q. Therapeutic consultation. In addition to meeting the service coverage requirements in 12VAC30-120-1020 and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-1040, professionals rendering therapeutic consultation services shall meet all applicable state or national licensure, endorsement or certification requirements. The following documentation shall be required for therapeutic consultation:

1. A Plan for Supports, that contains at a minimum, the following elements:

a. Identifying information;

b. Desired outcomes, support activities, and time frames; and

c. Specific consultation activities.

2. A written support plan detailing the recommended interventions or support strategies for providers and family/caregivers to better support the individual enrolled in the waiver in the service.

3. Ongoing documentation of rendered consultative services which may be in the form of contact-by-contact or monthly notes, which must be signed and dated, that identify each contact, what was accomplished, the professional who made the contact and rendered the service.

4. If the consultation services extend three months or longer, written quarterly reviews are required to be completed by the service provider and shall be forwarded to the case manager. If the consultation service extends beyond one year or when there are changes to the Plan for Supports, the Plan shall be reviewed by the provider with the individual and family/caregiver, as appropriate. The Plan for Supports shall be agreed to by the individual and family/caregiver, as appropriate, and the case manager and shall be submitted to the case manager. All changes to the Plan for Supports shall be reviewed with and agreed to by the individual and the individual's family/caregiver, as appropriate.

5. A final disposition summary must be forwarded to the case manager within 30 days following the end of this service.

R. Transition services. Providers shall be enrolled as a Medicaid provider for case management. DMAS or the DMAS designated agent shall reimburse for the purchase of appropriate transition goods or services on behalf of the individual as set out in 12VAC30-120-1020 and 12VAC30-120-2010.

S. Case manager's responsibilities for the Medicaid Long-Term Care Communication Form (DMAS-225).

1. When any of the following circumstances occur, it shall be the responsibility of the case management provider to notify DBHDS and the local department of social services, in writing using the DMAS-225 form, and the responsibility of DBHDS to update DMAS, as requested:

a. Home and community-based waiver services are implemented.

b. An individual enrolled in the waiver dies.

c. An individual enrolled in the waiver is discharged from all ID Waiver services.

d. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days.

e. A selection by the individual enrolled in the waiver and the individual's family/caregiver, as appropriate, of an alternative community services board/behavioral health authority that provides case management services.

2. Documentation requirements. The case manager shall maintain the following documentation for review by DMAS for a period of not less than six years from each individual's last date of service:

a. The initial comprehensive assessment, subsequent updated assessments, and all Individual Support Plans completed for the individual;

b. All Plans for Support from every provider rendering waiver services to the individual;

c. All supporting documentation related to any change in the Individual Support Plans;

d. All related communication with the individual and the individual's family/caregiver, as appropriate, consultants, providers, DBHDS, DMAS, DRS, local departments of social services, or other related parties;

e. An ongoing log that documents all contacts made by the case manager related to the individual enrolled in the waiver and the individual's family/caregiver, as appropriate; and

f. When a service provider or consumer-directed personal or respite assistant or companion is designated by the

case manager to collect the patient pay amount, a copy of the case manager's written designation, as specified in 12VAC30-120-1010 D 5, and documentation of monthly monitoring of DMAS-designated system.

T. The service providers shall maintain, for a period of not less than six years from the individual's last date of service, documentation necessary to support services billed. Review of individual-specific documentation shall be conducted by DMAS staff. This documentation shall contain, up to and including the last date of service, all of the following:

1. All assessments and reassessments.

2. All Plans for Support developed for that individual and the written reviews.

3. Documentation of the date services were rendered and the amount and type of services rendered.

4. Appropriate data, contact notes, or progress notes reflecting an individual's status and, as appropriate, progress or lack of progress toward the outcomes on the Plans for Support.

5. Any documentation to support that services provided are appropriate and necessary to maintain the individual in the home and in the community.

6. Documentation shall be filed in the individual's record upon the documentation's completion but not later than two weeks from the date of the document's preparation. Documentation for an individual's record shall not be created or modified once a review or audit of that individual enrolled in the waiver has been initiated by either DBHDS or DMAS.

VA.R. Doc. No. R16-3805; Filed December 17, 2015, 3:05 p.m.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Titles of Regulations: **12VAC35-220. Certification Requirements for Early Intervention Professionals, Early Intervention Specialists, and Early Intervention Case Managers (repealing 12VAC35-220-10 through 12VAC35-220-100).**

12VAC35-225. Requirements for Virginia Early Intervention System (adding 12VAC35-225-10 through 12VAC35-225-540).

Statutory Authority: § 2.2-5304 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 10, 2016.

Effective Date: February 27, 2016.

Agency Contact: Catherine Hancock, Part C Administrator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6592, FAX (804) 371-7959, or email catherine.hancock@dbhds.virginia.gov.

Basis: The Department of Behavioral Health and Developmental Services (DBHDS) has the legal authority to promulgate these regulations under § 2.2-5304 of the Code of Virginia, as the state lead agency appointed to implement the early intervention system in Virginia, and under Item 315 H 4 of Chapter 806 of the 2013 Acts of Assembly.

In addition, these regulations implement Part C of the Individuals with Disabilities Education Act (IDEA), at 20 USC § 1431 et seq. and at 34 CFR Part 303, in Virginia.

Purpose: These regulations are being promulgated to conform Virginia's regulations to the federal IDEA Part C regulations that were published in the Federal Register on September 28, 2011. The proposed fast-track regulations describe early intervention practices that are already in place. This regulatory package will replace the current emergency regulations. The federal regulatory changes were predominately in the areas of increasing family protections and the requirements of the local early intervention program for transitioning infants and toddlers to other programs and services when early intervention programs are completed. These regulations ensure that infants, toddlers, and their families receive entitled services and specify protections that are provided to families. The regulations specify how services are planned, who is required to participate in the team planning, and the timelines for providing and reviewing services that are provided. Additionally, the regulations explain family rights and the required dispute resolution process for families.

Rationale for Using Fast-Track Process: The U.S. Department of Education Office of Special Education Programs (OSEP) must approve a state's policies, procedures, and regulations for implementing the IDEA Part C grant. Approval of the regulations, policies, and procedures is required to receive grant funding from OSEP. The fast-track rulemaking process is being utilized so that Virginia can meet the federal deadline for approval, which is June 30, 2016. Without permanent regulations, Virginia's $10.7 million federal Early Intervention (Part C of IDEA) grant would be at risk. The fast-track rulemaking process is the most feasible approach to meet the federal deadline. Since the practices and procedures defined in the regulations have been required by the Early Intervention Practice Manual, the regulations are not considered controversial. The requirements have been in place for more than three years. There have been limited changes to the emergency regulations. These changes are not considered substantive and therefore are expected to be noncontroversial.

Substance: The only substantive changes from the emergency regulations to the fast-track regulations occur in 12VAC35-225-490 and 12VAC30-225-500.

In 12VAC30-225-490 the requirement that DBHDS notify practitioners when their early intervention certification

expires is deleted as DBHDS does not have the capacity in its data system to send these notices.

In 12VAC30-225-500 the requirement that DBHDS notify practitioners that their status is inactive one year after their certification lapses is deleted as DBHDS does not have the capacity in its data system to send these notices.

Issues: The primary advantages to implementing the regulations are that Virginia will be in compliance with federal regulations and will remain eligible for Early Intervention Part C of IDEA grant funding for infants and toddlers with disabilities. The advantage to the public is that infants and toddlers will continue to receive services and supports to promote their functional abilities and prevent complications. The provision of early intervention services has been demonstrated to reduce treatment and educational costs later in life.

There are no disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulation will consolidate and make permanent requirements for Early Intervention (EI) services that are currently located in permanent certification regulations, policy manuals, and emergency regulations.

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

Estimated Economic Impact. The proposed regulation will consolidate and make permanent requirements for EI services. EI is a system of services that helps eligible babies and toddlers learn the skills that typically develop during the first three years of life, such as: physical (reaching, rolling, crawling, and walking); cognitive (thinking, learning, solving problems); communication (talking, listening, understanding); social/emotional (playing, feeling secure and happy); and self-help (eating, dressing).

Provision of EI services started in 1986 when the federal Individuals with Disabilities Education Act (IDEA) was enacted. IDEA governs how states and public agencies provide EI, special education, and related services to children with disabilities. Part C of IDEA refers to the section of the act included in 1986 (originally "Part H" until 1997) authorizing the federal grants for the Infants and Families Program that serves infants and toddlers with developmental delays or who have diagnosed physical or mental conditions with high probabilities of resulting in developmental delays.

Early intervention is available in every state and territory of the United States. Virginia has participated in the federal EI program under IDEA since its inception in 1986. In Virginia, the Department of Behavioral Health and Developmental Services (DBHDS) acts as the lead agency for the statewide system of EI services. The name of the system is "The Infant & Toddler Connection of Virginia." There are 40 local lead agencies. The purpose of the program is to identify children who could benefit from EI services; establish their eligibility under Part C of the IDEA; coordinate care; and assure the availability of needed services. In fiscal years (FY) 2014 and 2015, 16272 and 17022 infants and toddlers were served in this system, respectively.

EI services bring together families and service providers from many aspects of the community, including public and private agencies, parent child centers, local school districts, and private providers. Supports and services come together to meet each child's unique needs and the needs of their family in their home and community. Funding for services comes from a variety of sources, including the federal grant ($8.5 million), state funds ($15 million), local funds ($8.1 million), Medicaid ($13.8 million), targeted case management ($5.7 million), private insurance ($10.5 million), family cost share ($0.9 million), and other sources ($4.9 million).[1]

EI expenditures by type of service, on the other hand, are as follows: assessment for service planning ($2.8 million); developmental services ($3.3 million); eligibility determinations ($1.1 million); occupational therapy ($1.8 million); physical therapy ($2.7 million); service coordination ($12.4 million); speech language pathology ($8.4 million); services by private providers ($29.6 million); and $1 million for assistive technology, audiology, counseling, health, nursing, nutrition, social work, transportation, vision, and other services combined.[2]

Until now, EI has been provided under a framework that was comprised of permanent certification regulations, policy manuals, and emergency regulations. The provider certification and case manager certification requirements were added to the Virginia Administrative Code in 2011 and 2013, respectively. In September 2011, federal IDEA regulations were revised increasing family protections and requirements for transitioning infants and toddlers from EI (Part C) to educational services for school children 3-21 years of age (Part B). DBHDS implemented the changes through the policy guidance in the Virginia Early Intervention Practice Manual in June 2012.

The 2012 changes included: Providing details regarding the state infrastructure for early intervention services; clarifying Virginia's referral system to EI services; outlining the intake, eligibility determination, and assessment processes; providing details for the expectations regarding service planning and delivery, including transition or discharge from the early intervention system of care; explaining the service funding and payment expectations; establishing the procedural safeguards that individuals can expect; addressing the alternative to resolve disputes; and continuing the certification process for certain EI practitioners and a comprehensive system of personnel development.

However, the U.S. Department of Education, Office of Special Education Programs (OSEP) required that the Commonwealth promulgate state regulations rather than a policy manual to reflect the totality of the federal regulations

in order to continue to be eligible for federal grant funds. In response, DBHDS adopted emergency regulations in December 2014 addressing the required elements. In the months since the adoption of emergency regulations additional non-substantive amendments have been made at the request of OSEP and are reflected in the proposed language in this action. Furthermore, DBHDS now proposes to eliminate two notification requirements that were in the emergency regulations as DBHDS does not have the capacity in its data system to send the notices. These include the requirement that DBHDS notify practitioners when their EI certification expires and that their status is inactive one year after their certification lapses.

In short, the proposed regulations consolidate permanent certification regulations, policy manuals, and emergency regulations in one chapter of the Virginia Administrative Code.

No significant change in the administration of EI services, funding sources, or service delivery is expected upon promulgation of the proposed regulations. However, without permanent regulations, Virginia's current $10.7 million federal grant would be at risk.[3] Thus, the main benefit of the proposed regulation is that Virginia will be in compliance with federal regulations and will remain eligible for EI Part C of IDEA grant funding for infants and toddlers with disabilities. Continued federal funding will help infants and toddlers to continue to receive services and supports to promote their functional abilities and prevent complications. Available literature also shows that EI services not only benefit infants and toddlers and their families, they also produce net benefits for society. For example, EI services have been shown to produce public benefits in academic achievement, behavior, educational progression and attainment, reduced delinquency and crime, and labor market success.[4] Early childhood programs are estimated to produce $3.23 to $9.20 in public benefits for each dollar spent.[5]

Businesses and Entities Affected. The proposed permanent regulation will help maintain Virginia's current EI system in its current state. In FY 2015, there were 17,022 infants and toddlers served in the EI program. There are 40 local EI programs, and approximately 70 small businesses that provide early intervention services.

Localities Particularly Affected. The proposed regulation applies throughout the Commonwealth.

Projected Impact on Employment. The proposed regulation is not likely to have a significant impact on employment upon promulgation. However, it has a positive impact on employment in that it will help maintain Virginia's current EI system and the jobs of people employed in the system.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected upon promulgation of the proposed regulation.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation will not impose costs or other effects on small businesses upon promulgation. However, it will help maintain Virginia's current EI system and ensure small businesses currently providing goods and services in the system continue to do so.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses: The proposed regulation will not have an impact on non-small businesses upon promulgation.

Localities: The proposed regulation will not adversely affect localities.

Other Entities: The proposed regulation will not adversely affect other entities.

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[1]Source: Report on Virginia's Part C Early Intervention System, submitted to the Chairs of the House Appropriations and Senate Finance Committees of the General Assembly, December 1, 2014.

[2]Ibid.

[3]The federal deadline for approval is June 30, 2016.

[4]National Assessment of IDEA Overview, U.S. Department of Education, 2011.

[5]Early Intervention, IDEA Part C Services, and the Medical Home: Collaboration for Best Practice and Best Outcomes, American Academy of Pediatrics, 2013.

Agency's Response to Economic Impact Analysis: The Department of Behavioral Health and Developmental Services concurs with the economic impact analysis by the Department of Planning and Budget.

Summary:

These regulations (i) provide details regarding the state infrastructure for early intervention services, not already provided by the Code of Virginia; (ii) clarify Virginia's referral system to early intervention services; (iii) outline the intake, eligibility determination, and assessment processes; (iv) detail the expectations regarding service planning and delivery, including transition or discharge from the early intervention system of care; (v) explain the service funding and payment expectations; (vi) establish the procedural safeguards that individuals can expect; (vii) address the alternative to resolve disputes; and (viii) establish a certification process for certain early intervention practitioners and a comprehensive system of personnel development.

This regulatory action repeals 12VAC35-220, Certification Requirements for Early Intervention Professionals, Early Intervention Specialists, and Early Intervention Case

Managers, as the amendments incorporate language for the certification process into the new regulation.

CHAPTER 225
REQUIREMENTS FOR VIRGINIA EARLY INTERVENTION SYSTEM

Part I
Authority and Definitions

12VAC35-225-10. Authority.

A. Pursuant to § 2.2-5304 of the Code of Virginia, the Governor has designated the Department of Behavioral Health and Developmental Services as the state lead agency responsible for implementing the Virginia early intervention services system and ensuring compliance with federal requirements.

B. Sections 2.2-2664, 2.2-5301, 2.2-5303, 2.2-5304, 2.2-5305, and 2.2-5306 of the Code of Virginia establish the structure of Virginia's early intervention system, including the duties and responsibilities of the state lead agency, coordinating council, and participating agencies.

C. Virginia's early intervention system, the Infant & Toddler Connection of Virginia, must include, at a minimum, the components required by Part C of the Individuals with Disabilities Education Act at 20 USC § 1435(a) and at 34 CFR Part 303.

12VAC35-225-20. Definitions.

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

"Ability to pay" means the amount a family is able to contribute toward the cost of early intervention services, based on family size, income, and expenses.

"Adjusted age" means an adjustment that is made for premature birth (gestation less than 37 weeks) used to determine developmental status until the child is 18 months of age.

"Administrative complaint" means a written, signed complaint by an individual or organization alleging that the department, local lead agency, or early intervention service provider violated a requirement of Part C or this chapter.

"Assessment" means the ongoing procedures used by qualified early intervention service providers to identify (i) the child's unique strengths and needs and the concerns of the family; (ii) the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under Part C; and (iii) the resources, priorities, and supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, fabricated, or customized, that is used to increase, maintain, or improve functional capabilities of a child. The term does not include a medical device that is surgically implanted, such as a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

"Assistive technology service" means any service that directly assists in the selection, acquisition, or use of an assistive technology device. Assistive technology services include (i) evaluating the needs of the child, including a functional evaluation in the child's customary environment; (ii) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices; (iii) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (iv) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (v) providing training or technical assistance to a child, or, if appropriate, that child's family; and (vi) providing training or technical assistance to professionals, including individuals providing education or rehabilitation services, or other individuals who provide services to or are otherwise substantially involved in the major life functions of the child.

"Atypical development" means one or more of the following conditions or responses: (i) atypical or questionable sensory-motor responses; (ii) atypical or questionable social-emotional development; (iii) atypical or questionable behaviors that interfere with the acquisition of developmental skills; or (iv) impaired social interaction and communication skills with restricted and repetitive behaviors.

"Audiology" means services that include (i) identifying children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques; (ii) determining the range, nature, and degree of hearing loss and communication functions by use of audiological evaluation procedures; (iii) referring children with auditory impairment for medical or other services necessary for habilitation or rehabilitation; (iv) providing auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services; (v) providing services for prevention of hearing loss; and (vi) determining the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

"Child find" means a comprehensive and coordinated system to locate, identify, refer, and evaluate all children with disabilities in Virginia who may be eligible for early intervention services under Part C.

"Child with a disability" or "infant or toddler with a disability" means an individual who is under three years of age and who needs early intervention services because he is experiencing a developmental delay in one or more areas of development or atypical development or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Counseling services" means the assessment and treatment of mental, emotional, or behavioral disorders and associated distresses that interfere with mental health, including (i) individual or family group counseling with the parent or parents and other family members; (ii) collaborating with the family, service coordinator, and other early intervention service providers identified on an infant's or toddler's individualized family service plan (IFSP); and (iii) family training, education, and support provided to assist the family of an infant or a toddler with a disability in understanding his needs related to development, behavior, or social-emotional functioning and to enhance his development.

"Day" means calendar day, unless clearly specified otherwise.

"Department" means the Department of Behavioral Health and Developmental Services.

"Developmental delay" means a level of functioning that (i) is at least 25% below the child's chronological or adjusted age in cognitive, physical, communication, social or emotional, or adaptive development or (ii) demonstrates atypical development or behavior even in the absence of a 25% delay. Developmental delay is measured using the evaluation and assessment procedures described in 12VAC35-225-90.

"Developmental services" means services provided to a child with a disability that include (i) designing learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction; (ii) curriculum planning, including the planned interaction of personnel, materials, time, and space, that leads to achieving the outcomes in the child's IFSP; (iii) providing families with information, skills, and support related to enhancing the skill development of the child; and (iv) working with the child to enhance his development.

"Discipline" or "profession" means a specific occupational category that may provide early intervention supports and services to eligible children under Part C and their families.

"Due process complaint" means a complaint filed by a parent requesting a due process hearing to resolve a disagreement with an early intervention service provider's proposal or refusal to initiate or change identification, eligibility determination, or placement of the child or the provision of early intervention services to the child or family.

"Duration" means the projection of when a given early intervention service will no longer be provided, such as when the child is expected to achieve the results or outcomes in his IFSP.

"Early intervention practitioner" means a person who is qualified to apply for or who holds certification as an early intervention professional, specialist, or case manager. An early intervention practitioner may be employed as an early intervention service provider under Part C.

"Early intervention records" means all records regarding a child that are required to be collected, maintained, or used under Part C.

"Early intervention service provider" means a provider agency, whether public, private, or nonprofit, or an early intervention practitioner that provides early intervention services under Part C, whether or not the agency or individual receives federal Part C funds.

"Early intervention services" means services provided through Part C designed to meet the developmental needs of children and families and to enhance the development of children from birth to age three years who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. Early intervention services provided in the child's home and in accordance with this chapter shall not be construed to be home health services as referenced in § 32.1-162.7 of the Code of Virginia.

"Eligibility determination" means the evaluation procedures used by qualified early intervention service providers to determine a child's initial and continuing eligibility under Part C.

"Family fee" means the amount based on the accrued charges and copayments that may be charged to families for services that an infant or a toddler with a disability and his family receive each month. The family fee may not exceed the monthly cap.

"Frequency" means the number of days or sessions a service will be provided.

"Health services" means services necessary to enable a child receiving services under Part C to benefit from other early intervention supports and services he receives and includes (i) providing clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services and (ii) arranging consultation by physicians with other service providers concerning the special health care needs of the child that will need to be addressed in the course of providing other early intervention services. The term does not include services that are surgical in nature (e.g., cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); purely medical in nature (e.g., hospitalization for management of congenital heart ailments or the prescribing of medicine or drugs for any purpose); or related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant; devices (e.g., heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; or medical health services (e.g., immunizations and regular "well-baby" care) that are routinely recommended for all children.

"Homeless children" means children who meet the definition given the term "homeless children and youths" in § 752 (42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC § 11434a et seq.

"Inability to pay" means the amount a family is able to contribute toward the cost of early intervention services is zero, resulting in the family's receiving all early intervention services at no cost to the family.

"Indian" means an individual who is a member of an Indian tribe.

"Indian tribe" means any federal or state Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation.

"Individualized family service plan" or "IFSP" means a written plan for providing early intervention supports and services to a child with a disability or his family that (i) is based on the evaluation for eligibility determination and assessment for service planning; (ii) includes information based on the child's evaluation and assessments, family information, results or outcomes, and supports and services based on peer-reviewed research (to the extent practicable) that are necessary to meet the unique needs of the child and the family and to achieve the results or outcomes; and (iii) is implemented as soon as possible once parental consent is obtained.

"Informed clinical opinion" means the use of professional expertise and experience in combination with information gathered through eligibility determination or assessment for service planning, or both, to determine the child's developmental status and eligibility under Part C.

"Initial early intervention service coordination plan" means a written plan that specifies the activities that will be completed by the service coordinator prior to completion of the individualized family service plan.

"Intensity" means whether a service will be provided on an individual or group basis.

"Length of service" means the amount of time the service will be provided during each session (e.g., an hour or other specified timeframe).

"Local lead agency" means an entity that, under contract with the department, administers a local early intervention system.

"Location of service" means the actual place or places where the early intervention service will be provided.

"Medical services" means services provided by a licensed physician for diagnostic or eligibility determination purposes to determine a child's developmental status and need for early intervention supports and services.

"Monthly cap" means the maximum amount that a family will be required to pay per month for early intervention services regardless of the charge or charges or number of different types, frequency, or length of services a child and family receive.

"Multidisciplinary" means the involvement of two or more separate disciplines or professions.

"Native language" means the language or mode of communication, such as sign language, Braille, or oral communication for persons with no written language, that is normally used by the child or his parents.

"Natural environments" means settings that are natural or typical for a same-aged child without a disability and may include the home or community settings.

"Nursing services" means services that include (i) conducting assessments of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; (ii) providing nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and (iii) administering medications, treatment, and regimens prescribed by a licensed physician.

"Nutrition services" means services that include (i) individual assessments in nutritional history and dietary intake; anthropometric, biochemical, and clinical variables; feeding skills and feeding problems; and food habits and food preferences; (ii) developing and monitoring appropriate plans to address the nutritional needs of children eligible for early intervention supports and services based on the findings of individual assessments; and (iii) making referrals to appropriate community resources to carry out nutritional goals.

"Occupational therapy" means services that are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include (i) identifying and assessing the child's functional needs and providing interventions related to adaptive development; adaptive behavior; play; and sensory, motor, and postural development; (ii) adapting the environment and selecting, designing, and fabricating assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and (iii) preventing or minimizing the impact of initial or future impairment, delay in development, or loss of functional ability.

"Parent" means (i) a biological or adoptive parent of a child; (ii) a foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent; (iii) a guardian generally authorized to act as the child's parent or authorized to make early intervention, educational, health, or developmental decisions for the child (but not the state if the child is a ward of the state); (iv) an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives or an individual who is legally responsible for the child's welfare; or (v) a surrogate parent, when determined necessary in accordance with and assigned pursuant to this chapter. The

term "parent" does not include any local or state agency or its agents if the child is in the custody of said agency.

"Part B" means Part B of the Individuals with Disabilities Education Act, 20 USC § 1411 et seq.

"Part C" means Part C of the Individuals with Disabilities Education Act, 20 USC § 1431 et seq.

"Participating agencies" means the Departments of Health, Education, Medical Assistance Services, Behavioral Health and Developmental Services, and Social Services; the Departments for the Deaf and Hard-of-Hearing and Blind and Vision Impaired; and the Bureau of Insurance within the State Corporation Commission.

"Payor of last resort" means a funding source that may be used only after all other available public and private funding sources have been accessed.

"Personally identifiable information" means the name of the child, the child's parent, or other family members; the address of the child or the child's family; a personal identifier, such as the child's or parent's social security number; or a list of personal characteristics or other information that, alone or in combination, could be used to identify the child or the child's parents or other family members.

"Physical therapy" means services that promote the child's sensory or motor function and enhance his musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include (i) screening, evaluation for eligibility determination, and assessment of children to identify movement dysfunction; (ii) obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; (iii) adapting the environment and selecting, designing, and fabricating assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and (iv) providing individual or group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

"Primary referral sources" means those agencies, providers, entities, and persons who refer children and their families to the early intervention system and include (i) hospitals, including prenatal and postnatal care facilities; (ii) physicians; (iii) parents; (iv) child care programs and early learning programs; (v) local school divisions; (vi) public health facilities; (vii) other public health or social service agencies; (viii) other clinics and health care providers; (ix) public agencies and staff in the child welfare system, including child protective services and foster care; (x) homeless family shelters; and (xi) domestic violence shelters and agencies.

"Psychological services" means services that include (i) administering psychological and developmental tests and other assessment procedures; (ii) interpreting assessment results; (iii) obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and (iv) planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

"Service coordinator" means a person who holds a certification as an early intervention case manager and is responsible for assisting and enabling children with disabilities and their families to receive the services and rights, including procedural safeguards, that are authorized to be provided under Virginia's early intervention program.

"Sign language and cued language services" means (i) teaching sign language, cued language, and auditory or oral language; (ii) providing oral transliteration services, such as amplification; and (iii) providing sign and cued language interpretation.

"Single point of entry" means the single entity designated by the local lead agency in each local early intervention system where families and primary referral sources make initial contact with the local early intervention system.

"Social work services" means services that include (i) making home visits to evaluate a child's living conditions and patterns of parent-child interaction; (ii) preparing a social or emotional developmental assessment of the child within the family context; (iii) providing individual and family-group counseling with parents and other family members, including appropriate social skill-building activities with the child and parents; (iv) working with identified problems in the living situation (home, community, and any center where early intervention supports and services are provided) that affect the child's use of early intervention supports and services; and (v) identifying, mobilizing, and coordinating community resources and services to enable the child with a disability and his family to receive maximum benefit from early intervention services.

"Speech-language pathology services" means services that include (i) identifying children with communication or language disorders and delays in development of communication skills and identifying and appraising specific disorders and delays in those skills; (ii) referring children with communication or language disorders and delays in development of communication skills for medical or other professional services necessary for the habilitation or rehabilitation; and (iii) providing services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

"State lead agency" means DBHDS, which is the agency designated by the Governor to receive funds to administer the state's responsibilities under Part C.

"Surrogate parent" means a person assigned by the local lead agency or its designee to ensure that the rights of a child are protected when no parent can be identified; the lead agency or

other public agency, after reasonable efforts, cannot locate a parent; or the child is a ward of the state.

"Transportation and related costs" means the cost of travel and other costs that are necessary to enable a child with a disability and his family to receive early intervention supports and services.

"Virginia Interagency Coordinating Council" or "VICC" means the advisory council, established pursuant to § 2.2-2664 of the Code of Virginia, to promote and coordinate Virginia's system of early intervention services.

"Vision services" means services that include (i) evaluating and assessing visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development; (ii) referring for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and (iii) providing communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

"Visit" means a face-to-face encounter with (i) the child with a disability or (ii) his parent, another family member, or caregiver, or both, for the purpose of providing early intervention supports and services.

"Ward of the state" means a child who, as determined by Virginia, is a foster child or is in the custody of a public children's residential facility. The term does not include a foster child who has a foster parent who meets the definition of "parent."

Part II

Virginia Early Intervention Services System

12VAC35-225-30. Early intervention services applicability, availability, and coordination.

A. This chapter shall apply to state and local lead agencies, early intervention practitioners, and provider agencies.

B. Appropriate early intervention services based on scientifically based research, to the extent practicable, shall be available to all children with disabilities who are eligible for early intervention services in Virginia and their families, including (i) children and families who reside on an Indian reservation geographically located in Virginia or who are homeless and (ii) children who are wards of the state.

C. The Virginia Interagency Coordinating Council (VICC) shall promote and coordinate early intervention services in the Commonwealth and shall advise and assist the department.

1. Nonstate agency members of the VICC shall be appointed by the Governor. State agency representatives shall be appointed by their agency directors or commissioners.

2. The VICC membership shall reasonably represent the population and shall be composed as follows:

a. At least 20% shall be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for children with disabilities. At least one parent member shall be a parent of a child with a disability aged six years or younger;

b. At least 20% shall be public or private providers of early intervention services;

c. At least one member shall be from the Virginia General Assembly;

d. At least one member shall be involved in personnel preparation;

e. At least one member shall be from each of the participating agencies involved in the provision of or payment for early intervention services to children with disabilities and their families. These members shall have sufficient authority to engage in policy planning and implementation on behalf of the participating agency and shall include:

(1) At least one member from the Department of Education, the state educational agency responsible for preschool services to children with disabilities. This member shall have sufficient authority to engage in policy planning and implementation on behalf of the Department of Education;

(2) At least one member from the Department of Medical Assistance Services, the agency responsible for the state Medicaid program;

(3) At least one member from the Department of Social Services, the agency responsible for child care and foster care;

(4) At least one member from the State Corporation Commission, Bureau of Insurance, the agency responsible for regulating private health insurance;

(5) At least one member designated by the Office of the Coordination of Education of Homeless Children and Youth;

(6) At least one member from the Department of Behavioral Health and Developmental Services, the agency responsible for children's mental health;

(7) At least one member from the Department for the Blind and Vision Impaired;

(8) At least one member from the Department for the Deaf and Hard of Hearing; and

(9) At least one member from the Department of Health;

f. At least one member shall be from the Children's Health Insurance Program (CHIP) of Virginia;

g. At least one member shall be from a Head Start or Early Head Start agency or program in Virginia; and

h. Other members selected by the Governor.

3. The VICC shall operate as follows:

a. The VICC shall have bylaws that outline (i) nomination processes and roles of officers and committees and (ii) other operational procedures;

b. No member of the VICC shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Virginia law;

c. The VICC shall meet, at a minimum, on a quarterly basis;

d. VICC meetings shall be announced in advance in the Commonwealth Calendar and through an announcement to local lead agencies; and

e. VICC meetings shall be open and accessible to the public, and each meeting shall include a public comment period. Interpreters for persons who are deaf and other necessary services for both VICC members and participants shall be provided as necessary and upon request.

4. Subject to approval by the Governor, the VICC shall work with the department to develop an annual budget for VICC expenses that may include the use of Part C funds for the following:

a. Conducting hearings and forums;

b. Reimbursing members of the VICC for reasonable and necessary expenses for attending VICC meetings and performing VICC duties, including child care for parent representatives;

c. Compensating a member of the VICC if the member is not employed or must forfeit wages from other employment when performing official VICC business;

d. Hiring staff; and

e. Obtaining the services of professional, technical, and clerical personnel as may be necessary to carry out its functions under Part C.

5. Except as provided in subdivision 4 e of this subsection, VICC members shall serve without compensation from funds available under Part C.

Part III

Referrals for Early Intervention Services and Supports

12VAC35-225-40. Public awareness and child identification and referral.

A. The department shall develop and implement a public awareness program that focuses on the early identification of infants and toddlers with disabilities and provides information to parents of infants and toddlers through primary referral sources.

B. Local lead agencies and early intervention service providers shall collaborate with the department to prepare and disseminate information to all primary referral sources, including a description of the early intervention services available, a description of the child find system and how to refer a child under the age of three years for eligibility determination or early intervention services, and a central directory.

C. The department, local lead agencies, and early intervention service providers shall collaborate with and assist primary referral sources in disseminating the information in subsection B of this section to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications.

D. Local lead agencies shall develop and implement local public awareness and child find procedures that include the methods to be used for planning and distributing public awareness materials and the roles of agencies and persons in the community involved in public awareness and child find activities.

E. The department shall maintain a central directory that shall be accessible to the general public through a toll-free number and the Internet. The central directory shall include accurate and up-to-date information about:

1. Public and private early intervention services, resources, and experts available in Virginia;

2. Professional and other groups (including parent support and training and information centers) that provide assistance to children with disabilities and their families; and

3. Research and demonstration projects being conducted in Virginia relating to children with disabilities.

F. The department shall implement a comprehensive child find system that is consistent with Part B of the Individuals with Disabilities Education Act, 20 USC § 1411 et seq., and ensures that all children with disabilities who are eligible for early intervention services in Virginia are identified, located, and evaluated for eligibility determination, including:

1. Indian children with disabilities residing on a reservation geographically located in Virginia, including coordination, as necessary, with tribes, tribal organizations, and consortia;

2. Children with disabilities who are homeless, in foster care, and wards of the state;

3. Children who are the subject of a substantiated case of child abuse or neglect; and

4. Children who are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

G. The department shall ensure that the child find system is coordinated with all other major efforts to locate and identify children by other state agencies responsible for administering the various education, health, and social service programs relevant to children with disabilities and their families, including Indian tribes, and with the efforts of the:

1. Preschool special education program through the Department of Education;

2. Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program (42 USC § 711) under Title V of the Social Security Act;

3. Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under Title XIX (42 USC § 1396 et seq.) of the Social Security Act;

4. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 USC § 15001 et seq.);

5. Head Start and Early Head Start programs;

6. Supplemental Security Income program under Title XVI (42 USC § 1381 et seq.) of the Social Security Act;

7. Child protection and child welfare programs, including programs administered by, and services provided through, the Department of Social Services, as the foster care agency and as the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 USC § 5101 et seq.);

8. Child care programs in Virginia;

9. Programs that provide services under the Family Violence Prevention and Services Act (42 USC § 10401 et seq.);

10. Virginia's Early Hearing Detection and Intervention (EHDI) system;

11. Children's Health Insurance Program (CHIP) authorized under Title XXI (42 USC § 1397aa et seq.) of the Social Security Act;

12. Virginia Newborn Screening Program;

13. Virginia Congenital Anomalies Reporting Education System (VACARES); and

14. Care Connection of Virginia.

H. The department and local lead agencies shall use interagency agreements, memoranda of understanding, or other mechanisms, as needed, to minimize duplication of child find efforts among the programs listed in subsection G of this section and to ensure that there will be effective use of the resources available through each public agency and early intervention service providers in Virginia to implement the child find system.

12VAC35-225-50. Referrals to the single point of entry.

A. All local lead agencies shall identify a single point of entry in their respective local early intervention systems to receive all referrals and inquiries from families and primary referral sources. This single point of entry shall be published in local public awareness and child find materials and communicated to potential referral sources.

B. Primary referral sources shall refer to the single point of entry any infant or toddler potentially eligible for early intervention services as soon as possible, but in no case more than seven days, after the child has been identified as potentially eligible.

C. The department shall require that local community services boards responsible for implementing and managing discharge plans required by § 32.1-127 B 6 of the Code of Virginia for substance-abusing postpartum women and their infants refer to the single point of entry any child under the age of three years who is identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

D. The Department of Social Services shall refer to the single point of entry any child under the age of three years who is:

1. Identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or

2. The subject of a founded disposition of child abuse or neglect.

E. Early intervention service providers shall refer to the single point of entry any infant or toddler potentially eligible for early intervention services who becomes known to the provider through any source other than the early intervention system.

F. Parental consent shall not be required in order to make a referral to the local early intervention system, and the local system shall accept a referral even if the referral source has not informed the family of the referral.

G. Referrals to the local single point of entry may be made by phone, fax, mail, email, or web-based system; in writing; or in person.

H. When making a referral, the referral source shall provide, at minimum, the child's or a family member's name and one method of contacting the family.

I. The date on which the local single point of entry receives a referral shall be counted as the first day of the 45-day timeline specified in 12VAC35-225-80 C within which eligibility determination, assessment for service planning, and the initial IFSP meeting shall be completed.

J. The single point of entry shall inform referred families whose children are close to the age of eligibility for early childhood special education services through the local school division under Part B that they have the option to be referred to the local school division instead of or simultaneously with referral to early intervention under Part C.

K. Upon referral, the single point of entry shall begin an early intervention record for the child and assign a service coordinator who will assist the family with intake, eligibility determination, and, if eligible, assessment for service planning and development of an IFSP.

Part IV
Intake, Eligibility, and Assessment

12VAC35-225-60. Intake.

A. For purposes of the early intervention system, including determination of required parental consents or exercise of parental rights, when more than one party is qualified under the definition of parent, the biological or adoptive parent must be presumed to be the parent unless that person does not have legal authority to make educational or early intervention decisions for the child. However, if a judicial decree or order identifies a specific person or persons to act as the parent of a child or to make educational or early intervention decisions on behalf of a child, then that person or persons shall be determined to be the parent.

B. The service coordinator shall conduct intake with the family in order to:

1. Inform the family about early intervention services and the IFSP process;

2. Provide the parent with a written notice and explanation of the family's rights and procedural safeguards under Part C, including:

a. A description of what personally identifiable information is maintained, the types of information sought, the methods used in gathering information, including the sources from whom information is gathered, and the uses to be made of the information;

b. The policies that early intervention service providers must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

c. The rights of parents and children regarding the foregoing information, including their rights under the confidentiality provisions of Part C; and

d. A description of the languages in which this notice of rights and safeguards is available in Virginia;

3. With prior written notice and parental consent, gather information about the child's development and health history to assist in eligibility determination;

4. Facilitate identification of team members for and coordinate scheduling of eligibility determination;

5. Provide the schedule of sliding fees for early intervention services provided under Part C and other payment information; and

6. For children with Medicaid, ensure completion of the paperwork, including development of an Initial Early Intervention Service Coordination Plan and data entry necessary to enroll the child in the Medicaid early intervention benefit. This plan shall end when the child is found ineligible for early intervention; the IFSP is signed; or 90 calendar days from the date of intake, whichever comes first.

12VAC35-225-70. Eligibility criteria.

A. The department shall identify physical and mental conditions with high probability of resulting in developmental delay.

B. A child shall be eligible for early intervention services under Part C if the child is younger than three years of age and has:

1. A developmental delay as measured through the evaluation and assessment procedures described in this section; or

2. A diagnosed physical or mental condition with high probability of resulting in developmental delay.

12VAC35-225-80. Evaluation for eligibility criteria.

A. A child's medical and other records shall be used to establish initial eligibility (without conducting an evaluation for eligibility determination) if those records indicate that the child's level of functioning in one or more developmental areas constitutes a developmental delay or that the child otherwise meets the criteria for an infant or a toddler with a disability.

1. If the records document a diagnosed physical or mental condition with a high probability of resulting in developmental delay, then a certified early intervention case manager or certified early intervention professional shall complete and sign the eligibility determination form to document review of the record.

2. If the records document a developmental delay, a certified early intervention professional shall review the record to determine whether it establishes eligibility, completing and signing the eligibility determination form if it does.

B. With prior written notice and parental consent, each child under the age of three years who is referred to the early intervention system shall receive a timely, comprehensive multidisciplinary evaluation to determine eligibility unless eligibility is established under subsection A of this section.

C. Except as provided in subsection A of this section, the local lead agency shall ensure that, with parental consent, the evaluation for eligibility determination and, if the child is eligible, an assessment of the child and family and an initial IFSP meeting are completed within 45 days from the date of referral.

D. The 45-day timeline described in subsection C of this section shall not apply for any period when:

1. The child or parent is unavailable to complete the evaluation for eligibility determination, the assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention record; or

2. The parent has not provided consent for the evaluation for eligibility determination or the assessment of the child despite documented, repeated attempts by the service

coordinator or other service provider, or both, to obtain parental consent.

E. In the event that circumstances described in subsection D of this section delay the 45-day timeline, the service coordinator shall ensure:

1. The exceptional family circumstances, repeated attempts to obtain parental consent, or other circumstances resulting in a delay are documented in the child's early intervention record;

2. The evaluation for eligibility determination, the assessments of the child and family, and the initial IFSP meeting are completed as soon as possible after the documented exceptional family circumstances no longer exist, parental consent is obtained, or other circumstances causing a delay no longer exist; and

3. Development of an interim IFSP, if appropriate for the child and family.

12VAC35-225-90. Eligibility determination process.

A. Eligibility determination shall be conducted by a multidisciplinary team of certified early intervention professionals, which may include one individual who is certified as an early intervention practitioner in more than one discipline or profession, and shall include the use of informed clinical opinion.

B. Eligibility determination shall be conducted in a nondiscriminatory manner and with procedures selected that are not racially, culturally, or linguistically discriminatory.

C. Eligibility determination shall be conducted in the native language of the parent or other mode of communication used by the parent unless the early intervention service providers conducting the evaluation of the child determine that the language normally used by the child is developmentally appropriate for the child.

D. No single procedure shall be used as the sole criterion for determining a child's eligibility.

E. Eligibility determination shall include:

1. Use of an evaluation instrument;

2. Taking the child's history, including interviewing the parent;

3. Identifying the child's level of functioning in cognitive, physical, communication, social or emotional, and adaptive development;

4. Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

5. Reviewing medical, educational, or other records.

F. Informed clinical opinion may be used as an independent basis to establish a child's eligibility even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of instruments used to establish eligibility.

G. The eligibility determination date, methods, participants, and results shall be documented on the eligibility determination form.

H. The service coordinator shall provide the family with a copy and explanation of the eligibility determination form as soon as possible following eligibility determination at no cost to the family.

12VAC35-225-100. Ineligibility for early intervention services.

If, through the process of eligibility determination, a child is found to be not eligible for early intervention services, the service coordinator shall provide the parent with:

1. A prior written notice that the child has been determined to be not eligible, and

2. A copy and explanation of the notice of child and family rights and safeguards including the parent's right to dispute the eligibility determination by any combination of requesting mediation, making a due process complaint, or filing an administrative complaint.

12VAC35-225-110. Assessment for service planning.

A. With prior written notice and parental consent, each child found eligible for early intervention services shall receive:

1. A multidisciplinary assessment of the child's unique strengths and needs and the identification of services appropriate to meet those needs; and

2. A family-directed assessment of the resources, priorities, and concerns of the family and identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler.

B. Assessments for service planning shall be conducted by a multidisciplinary team of certified early intervention professionals, which may include one individual who is certified as an early intervention practitioner in more than one discipline or profession, and shall include the use of informed clinical opinion.

C. Assessments shall be conducted in a nondiscriminatory manner and with procedures selected that are not racially, culturally, or linguistically discriminatory.

D. Assessments shall be conducted in the native language of the parent or other mode of communication used by the parent unless the early intervention service providers conducting the assessment of the child determine that the language normally used by the child is developmentally appropriate for the child.

E. The multidisciplinary assessment of the child shall include:

1. A review of the results of the eligibility determination;

2. Use of a comprehensive assessment tool;

3. Personal observations of the child;

4. Identification of the child's needs in cognitive, physical, communication, social or emotional, and adaptive development; and

5. If the child is new to Virginia's early intervention system, determination of entry ratings on the child outcome indicators required by the U.S. Department of Education, Office of Special Education Programs.

F. The initial family assessment shall be conducted within 45 days from the date of referral if the parent concurs, even if other family members are not available. The family-directed assessment shall:

1. Be voluntary on the part of each family member participating in the assessment;

2. Be based on information obtained through an assessment tool and through an interview with those family members who elect to participate in the assessment;

3. Include the family's description of its resources, priorities, and concerns related to enhancing their child's development; and

4. Be conducted in the native language or other mode of communication used by the family member participating in the assessment, unless clearly not feasible to do so.

G. Early intervention service providers conducting assessments shall document the assessment results in the integrated, comprehensive assessment summary on the IFSP or in a separate written report that is then integrated into the comprehensive assessment summary on the IFSP.

Part V

Service Planning, Delivery, Transition, and Discharge

12VAC35-225-120. Individualized family service plan (IFSP) development.

A. A written IFSP shall be developed and implemented, with parental consent, for each eligible child.

B. The IFSP shall include:

1. The child's name, date of birth, gender, and city or county of residence; IFSP date and the dates the six-month IFSP review is due and dates reviews are completed; child's and family's primary language or mode of communication; parents' and, if requested by the family, other family members' contact information; and the service coordinator's name and contact information;

2. Information about the child's and family's daily routines and activities;

3. The child's present levels of physical, including vision, hearing, motor, and health status, cognitive, communication, social or emotional, and adaptive development based on the information from eligibility determination and assessment for service planning;

4. With the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child;

5. The measurable outcomes to be achieved for the child, including preliteracy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines for determining the degree to which progress toward meeting the outcomes is being made and whether revisions to the outcomes or early intervention services identified in the IFSP are necessary;

6. The specific early intervention services, based on peer-reviewed research (to the extent practicable), that are needed to meet the unique needs of the child and family and to achieve the identified outcomes including:

a. Assistive technology devices and assistive technology services;

b. Audiology services;

c. Developmental services;

d. Counseling services;

e. Family training services;

f. Health services;

g. Medical services;

h. Nursing services;

i. Nutrition services;

j. Occupational therapy;

k. Physical therapy;

l. Psychological services;

m. Service coordination services;

n. Sign language and cued language services;

o. Social work services;

p. Speech-language pathology services;

q. Transportation services and related costs;

r. Vision services; or

s. Other services, as identified by the IFSP team;

7. The length, duration, frequency, intensity, method, and location of service for each service;

8. A statement of the natural environment in which each early intervention service will be provided or a justification made by the IFSP team, including the parent, as to why, based on the child's outcomes, the service cannot be provided in the natural environment;

9. Payment arrangements, if any;

10. To the extent appropriate, the medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under Part C and the steps the service coordinator or family may take to assist the child and family in securing those other services if those services are not currently being provided;

11. The projected date for the initiation of each early intervention service identified in the IFSP, which shall be as soon as possible but no more than 30 days from the date the parent signs the IFSP unless the IFSP team agrees on a later start date in order to meet the needs of the child or family;

12. The name of the service coordinator who will be responsible for implementing the early intervention services identified in the IFSP; and

13. The steps and services to be taken to support the smooth transition of the child from early intervention services to preschool services under Part B or other appropriate services, if any. The transition steps in the IFSP shall include, but are not limited to, the following:

a. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

b. Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

c. Confirmation that the required notification, unless the parent disagrees, and with parental consent additional information, such as copies of evaluations and assessments and the most recent IFSP, needed by the local school division to ensure continuity of services have been sent to the local school division; and

d. Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

C. A meeting to develop the initial IFSP shall be held within 45 days from the date the referral is received.

D. Meetings of the multidisciplinary IFSP team, which must include two or more certified early intervention practitioners from separate disciplines or professions, shall include the following participants:

1. The parent or parents of the child;

2. Other family members, as requested by the parent, if feasible to do so;

3. An advocate or person outside of the family if the parent requests that the person participate;

4. The service coordinator who will be responsible for implementing the IFSP;

5. A person or persons directly involved in conducting eligibility determination, assessment for service planning, or both; and

6. As appropriate, persons who will be providing early intervention services to the child or family.

E. Each meeting to develop an IFSP shall:

1. Take place in a setting and at a time that is convenient to the family; and

2. Be conducted in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

F. If an IFSP team member is unable to attend an IFSP meeting, the service coordinator shall make arrangements for the person's involvement through other means, which may include participating by telephone, having a knowledgeable authorized representative attend the meeting, or submitting a written report.

G. The service coordinator shall provide prior written notice of the date, time, and location of the IFSP meeting to the family and other participants early enough before the IFSP meeting date to ensure that they will be able to attend.

H. The service coordinator shall assist the parent in preparing for the IFSP meeting and shall ensure that the parent has the information needed in order to fully participate in the meeting.

I. With parental consent, an interim IFSP shall be developed and implemented when an eligible child or the child's family has an immediate need for early intervention services prior to completion of eligibility determination and assessment for service planning.

1. The interim IFSP shall include the name of the service coordinator who will be responsible for implementing the interim IFSP and coordinating with other agencies and persons; the early intervention services that have been determined to be needed immediately, including the frequency, intensity, length, location, and methods of delivery; and the parent's signature indicating consent to implement the interim IFSP.

2. The development of an interim IFSP shall not negate the requirement to complete the eligibility determination and assessment for service planning and develop an initial IFSP within 45 calendar days of referral.

J. The service coordinator shall document in a contact note any circumstances that result in eligibility determination, assessment for service planning, or initial IFSP development occurring more than 45 calendar days after referral.

12VAC35-225-130. IFSP approval and selection of service providers.

A. The service coordinator shall explain the contents of the IFSP to the parent, and informed written consent shall be obtained as indicated by the parent's signature and date of signature on the IFSP prior to the provision of early intervention services.

B. The service coordinator shall assist the family in selecting a service provider for each early intervention service listed on the IFSP from among those provider agencies, including independent providers, that are qualified to provide the services identified on the IFSP, that are in the parent's payor network, and that practice in the area where the child and family live. The parent's choice of service providers shall be

documented on the IFSP addendum page, which shall be signed and dated by the parent prior to service delivery.

1. If no early intervention service provider that can support and assist the family in accomplishing the IFSP outcomes is available within the family's Medicaid or private insurance network, then the parent shall be able to choose an early intervention service provider from outside the parent's third party payor network.

2. If there is only one provider agency for the service needed by the child and family, then the parent shall be offered a choice of early intervention service providers from within that one provider agency for services other than service coordination. If the parent elects not to receive services from the one provider agency, then the local lead agency shall work to identify an alternative early intervention service provider.

3. The parent shall be offered the opportunity to select a provider agency any time a new service is added or when a change in provider agency is needed.

4. If the selected provider agency is unable to provide the service due to full provider caseloads or the requested early intervention service provider within that provider agency is unavailable, then the service coordinator shall explain to the parent the option to begin services right away with an available provider or to wait for his chosen provider to become available. If the parent chooses to wait, the service coordinator shall document the parent's decision in a contact note, the parent's consent to the IFSP service shall begin once the parent's specific provider is available, and services shall be provided in a timely manner following parental consent.

5. The service coordinator shall inform the parent that he may request to change his service provider at any time by contacting the service coordinator.

C. The service coordinator shall retain a signed copy of the IFSP and, as soon as possible following development of the IFSP, shall provide a copy to the parent at no cost to the family and to all service providers that participated in assessment or development of the IFSP or will be implementing the IFSP.

12VAC35-225-140. IFSP periodic review and updates.

A. A periodic IFSP review shall be conducted every six months or any time the parent, service coordinator, or another member of the IFSP team identifies the potential need for revisions to the IFSP outcomes or services.

B. Each periodic IFSP review shall provide for the participation of the IFSP team members listed in 12VAC35-225-120 D 1 through D 4. If conditions warrant, provisions must be made for the participation of other representatives identified in 12VAC35-225-120 D.

C. Each periodic IFSP review shall include a determination of the degree to which progress has been made toward achieving the outcomes identified in the IFSP and the need for revisions of the outcomes or early intervention services identified in the IFSP.

12VAC35-225-150. Annual IFSP review.

A. An annual IFSP review shall be conducted to evaluate and revise, as appropriate, the IFSP for each child and the child's family.

B. The annual IFSP review shall include a determination of the child's continuing eligibility to receive early intervention services.

1. If the child's records document a diagnosed physical or mental condition with a high probability of resulting in developmental delay, then a service coordinator or certified early intervention professional shall complete and sign the eligibility determination form to document review of the record.

2. If the child's records document a developmental delay based on ongoing assessment, then a certified early intervention professional shall review the record to determine whether it establishes eligibility and shall complete and sign the eligibility determination form if it does.

3. In all other circumstances, a multidisciplinary team shall review existing health and developmental information gathered through records, parent input, observation, and an evaluation tool, if needed, to determine the child's continuing eligibility. The child's continuing eligibility determination date, methods, participants, and results shall be documented on the eligibility determination form.

4. The service coordinator shall provide the family, at no cost, with a copy and explanation of the eligibility determination form as soon as possible following the eligibility determination.

C. Each annual IFSP review shall be conducted by the child's multidisciplinary team that includes the team members listed in 12VAC35-225-120 D.

D. During the annual IFSP review, the results of any current evaluations and assessments of the child and family shall be used in determining the early intervention services that are needed and will be provided.

12VAC35-225-160. Physician certification.

A. Physician certification shall be required regarding the medical necessity for services if the child (i) is covered by public health insurance (Medicaid, FAMIS, or TRICARE) or by private health insurance that requires such certification and (ii) will receive services that can be reimbursed under that insurance plan. Certification shall be obtained at the initial and annual IFSP and any time a service is added or the frequency of a service is changed through a periodic IFSP review.

B. The service coordinator shall obtain a written certification of medical necessity from a physician (or

physician assistant or nurse practitioner). A written certification requires:

1. A signature on the IFSP;

2. A signed letter referencing the IFSP; or

3. A completed and signed IFSP summary letter.

C. The service coordinator shall ensure that the certification required by this section certifies the IFSP as a whole. Early intervention service providers shall not be permitted to seek physician certification for individual services.

12VAC35-225-170. Service delivery.

A. Each early intervention service listed on a child's IFSP shall begin as soon as possible but no more than 30 days from the date the parent signs the IFSP unless the IFSP team decides on and documents the reasons for a later start date to meet the individual needs of the child and family. The 30-day timeline does not apply to delivery of an assistive technology device, which must be secured as soon as possible after the parent signs the IFSP.

B. Early intervention supports and services shall be provided only by certified early intervention service practitioners.

C. The service coordinator shall be responsible for the following:

1. Assisting parents of children with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for children and their families;

2. Coordinating the provision of early intervention services and other services, such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes, that the child needs or are being provided;

3. Conducting referral and other activities to assist families in identifying available early intervention service providers;

4. Coordinating, facilitating, and monitoring delivery of early intervention services required to ensure the services are provided in a timely manner;

5. Conducting follow-up activities to determine that appropriate early intervention services are being provided;

6. If the child has Medicaid or FAMIS:

a. Documenting in a contact note the family's preferred method of contact (i.e., face-to-face, phone, email, or text) for the family contacts that are required every three months and any change in the family's preferred method of contact;

b. Making at least one direct contact with the family every three calendar months, beginning no later than the month after the initial IFSP is signed, with the method of contact determined by the family; and

c. Requesting completion of a health status report by the child's physician every six months.

D. Early intervention service providers shall deliver services in accordance with the IFSP and make a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP.

E. Early intervention sessions canceled by the provider or missed due to a holiday shall be made up as quickly as possible unless the parent declines a make-up session.

F. Parents may request to change their early intervention service provider at any time by notifying their service coordinator.

12VAC35-225-180. Service documentation.

A. Early intervention service providers shall document all contacts made and all activities completed with or on behalf of families in a contact note within five business days of the contact. All contact notes shall include:

1. The child's first and last names;

2. Type of early intervention service provided;

3. Method of contact;

4. Date of the note and date of the contact if the note is not written on the same date; and

5. The early intervention provider's signature, with a minimum of first initial and last name, discipline and credentials of the provider, and the date the note is signed by the provider.

B. Contact notes that document a service session also shall include:

1. A narrative description of what occurred during the session including what was done; what the family or other caregiver did during the session, including how they actively participated during the session; how the child responded during the session, including what the child was able to do in relation to outcomes and goals; and suggestions for follow-up;

2. Who was present;

3. Length of session (in minutes);

4. Location or setting in which service was provided;

5. Information from the family about what has happened since the last session; and

6. Plan for the next contact.

C. Contact notes that document a service coordination contact or activity also shall include the length of the contact or activity (in minutes), the service coordination short-term goal that the contact activity is addressing, and progress toward achieving the service coordination goal.

12VAC35-225-190. Transition.

A. A child shall be considered potentially eligible for preschool services under Part B unless there is a clear expectation that the child will no longer require services by the time he reaches age three years. The determination of whether a particular child receiving early intervention

services is potentially eligible for Part B shall be made by that child's IFSP team as part of the transition process.

B. The department shall ensure the parent of a child with disabilities is informed of the availability of services under § 619 of the Individuals with Disabilities Education Act not fewer than 90 days prior to the toddler's third birthday.

C. For each child who is potentially eligible for preschool services under Part B, and unless the parent objects, the service coordinator shall ensure notification to the local school division and the Virginia Department of Education not fewer than 90 days before the child's third birthday or the anticipated date of transition if the child is age two years by September 30 of a given school year.

1. The notification shall include the child's name, date of birth, and parental contact information including the parents' names, addresses, and telephone numbers.

2. The parent shall be informed in writing, on the IFSP, of the information that will be included in the notification, the earliest date on which the notification will be sent to the local school division and the Virginia Department of Education, and his right to opt out of the notification by initialing the opt out statement on the IFSP.

3. If the parent opts out of the notification, the notification shall not be sent.

D. If a child is potentially eligible for preschool services under Part B, the service coordinator shall, with the approval of the child's family, convene a transition conference among the local early intervention system, the family, and the local school division at least 90 days and (at the discretion of all parties) up to nine months before the child's third birthday, or anticipated date of transition if the child is age two years by September 30 of a given school year, to discuss any services the child may receive under Part B.

E. If a child is not potentially eligible for preschool services under Part B, the service coordinator shall, with the approval of the family, make a reasonable effort to convene a transition conference among the local early intervention system, the family, and providers of other appropriate services, as available, to discuss appropriate services that the child may receive.

F. The service coordinator shall ensure development of a transition plan in the IFSP at least 90 days and (at the discretion of all parties) up to nine months before the child's third birthday, or anticipated date of transition if the child is age two years by September 30 of a given school year, for all children exiting early intervention.

1. The family shall be included in the development of the transition plan.

2. The transition plan shall include steps for the child to exit the early intervention system and any transition services that the IFSP team identifies as needed by that child and family.

3. The service coordinator shall review with the parent the program options for a child with a disability for the period from his third birthday through the remainder of the school year.

G. The meeting to develop the transition plan and the transition conference may be combined.

H. The meeting to develop the transition plan and the transition conference, whether combined or held separately, shall meet the requirements of an IFSP meeting in 12VAC35-225-120.

12VAC35-225-200. Referral and discharge.

A. The service coordinator shall transmit, with parental permission, child-specific information (e.g., current IFSP), recent assessment findings, and other pertinent records to the appropriate school division in which the child resides as soon as possible after the notification to the local school division to ensure continuity of services.

B. If the child is found eligible for early intervention services more than 45 days but less than 90 days before (i) the child's third birthday or (ii) April 1 when the child will reach the age of eligibility for special education at the beginning of the upcoming school year, then as soon as possible after eligibility is determined, the service coordinator shall provide the notification required in 12VAC35-225-190 C unless the parent objects to such disclosure.

C. If a child is referred to the local early intervention system less than 45 days before the child's third birthday and that child may be eligible for preschool services under Part B, the service coordinator shall, with parental consent, refer the child to the local school division and Virginia Department of Education, but the local early intervention system shall not be required to conduct an eligibility determination, assessment for service planning, or hold an initial IFSP meeting under these circumstances.

D. The service coordinator shall ensure exit ratings on the child outcome indicators required by the U.S. Department of Education, Office of Special Education Programs are completed prior to discharge from Virginia's early intervention system for all children who had an entry rating and who have been in the early intervention system for six months or longer since their initial IFSP.

1. The exit rating shall be done no more than six months prior to the child's exit from Virginia's early intervention system.

2. Any circumstances that prevent completion of exit ratings shall be documented in a contact note.

E. The service coordinator shall ensure that no early intervention services are provided on or after the child's third birthday.

Part VI
Service Funding and Payment Systems

12VAC35-225-210. Use of Part C funds.

A. Funds available under Part C shall be used for the following activities:

1. To implement and maintain a statewide system of early intervention supports and services for children with disabilities and their families;

2. For direct early intervention supports and services for children with disabilities and their families that are not otherwise funded through other public or private sources; and

3. To expand and improve supports and services for children with disabilities and their families that are otherwise available.

B. Federal Part C funds and state general funds designated for early intervention services under Part C shall be used as the payor of last resort and shall not be used to satisfy a financial commitment for supports and services that would otherwise have been paid for from another public or private source, including any medical program administered by the U.S. Department of Defense, but for the enactment of Part C of the Individuals with Disabilities Education Act.

C. The department and local lead agencies shall identify and coordinate all available resources to pay for early intervention services, including federal, state, local, and private sources.

D. The service coordinator shall coordinate the funding sources for early intervention services in each IFSP.

E. If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds available under Part C may be used to pay the provider of early intervention supports and services (excluding medical services) and for functions associated with the child find system, eligibility determination, and assessment for service planning pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

F. The department shall establish an interagency agreement with each participating state agency to ensure the provision of, and establish financial responsibility for, early intervention supports and services; to establish procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service or disputes about other matters related to Virginia's early intervention system; and to ensure that no early intervention supports and services to which a child is entitled are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

G. Local lead agencies shall develop interagency agreements, contracts, or memoranda of agreement with as many early intervention service providers as possible to meet the needs of children with disabilities and their families and shall allow families to have access to any certified early intervention service provider in the family's payor network who agrees to comply with all Part C requirements and is working in the local early intervention system area.

12VAC35-225-220. Services provided at public expense.

A. The following services shall be provided at public expense and at no cost to families:

1. Child find activities;

2. Eligibility determination and assessment for service planning;

3. Service coordination;

4. Administrative and coordinative activities related to the development, review, and evaluation of IFSPs and interim IFSPs; and

5. Administrative and coordinative activities related to implementation of procedural safeguards and other components of the statewide early intervention system related to child find, eligibility determination, assessment, and development of IFSPs.

B. Localities shall not be required to provide funding for any costs for early intervention services provided at public expense, either directly or through participating local public agencies.

12VAC35-225-230. System of payments.

A. The department shall establish and implement a system of payments, including a schedule of sliding family fees with monthly caps, for early intervention services provided under Part C. Under that system:

1. Fees shall not be charged to parents for the services a child is otherwise entitled to receive at no cost, including those listed in 12VAC35-225-220;

2. All early intervention services other than those listed in 12VAC35-225-220 shall be subject to family fees;

3. The inability of the parent of a child with a disability to pay for services shall not result in a delay or denial of services to the child or his family, such that if the family meets the criteria for inability to pay, the child shall receive all early intervention services at no cost to the family;

4. Parents shall not be charged any more than the actual cost of services, factoring in any amount received from other payment sources for that service;

5. Charges for early intervention supports and services shall be consistent regardless of the anticipated payment source, and parents with public insurance or benefits or private insurance shall not be charged disproportionately more than parents who do not have public insurance or benefits or private insurance;

6. All parents shall have the opportunity to submit information to establish ability to pay and a monthly cap for family fees. Parents who choose not to provide the required income information shall be charged for all

applicable copayments, deductibles, and the full early intervention rate for services not covered by insurance;

7. The service coordinator shall ensure a family's ability to pay is established and consent for use of private insurance, public benefits, or public insurance is determined at intake for children who are covered by Medicaid or FAMIS and for all other children prior to delivering early intervention services other than those services that must be provided at no cost to the family; and

8. A family's ability to pay shall be reviewed at each annual IFSP and any time the family's financial circumstances change. If the family is unable to provide the required information, it shall be charged for all applicable copayments and deductibles or the full early intervention rate for services not covered by insurance.

B. Family fees collected shall be retained by the local lead agency to support the local early intervention system.

C. Parents who wish to contest the imposition of a fee or the determination of the parents' ability to pay may contest such determinations in accordance with 12VAC35-225-380 A.

12VAC35-225-240. Use of public benefits or public insurance.

A. Parents shall not be required to enroll in public benefits or public insurance programs as a condition of receiving early intervention services, and parental consent shall be required prior to using the public benefits and public insurance of a child or parent if that child or parent is not already enrolled in such a program.

B. Parental consent shall be obtained before the local lead agency or the early intervention service provider discloses, for billing purposes, a child's personally identifiable information to the Department of Medical Assistance Services.

C. In Virginia, use of a child's or parent's public benefits or public insurance to pay for early intervention services shall not:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

2. Result in the child's parents paying for services that would otherwise be covered by the public benefits or public insurance program;

3. Result in any increase in premiums or discontinuation of public benefits or public insurance for that child or his parents; or

4. Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

D. If the parent gives consent for use of his private insurance to pay for early intervention services for a child who is covered by private insurance and by either public benefits or public insurance, the parent shall be responsible for the costs associated with use of the private insurance, as specified in 12VAC35-225-250 E.

E. If the parent does not provide the consent to use or enroll in public benefits or public insurance or to disclose information to the Department of Medical Assistance Services for billing purposes, the local lead agency must still make available the early intervention services on the IFSP to which the parent has provided consent.

12VAC35-225-250. Use of private insurance.

A. The private insurance of a family may not be used to pay for early intervention services unless the parent has provided prior consent.

B. Parental consent to use of private insurance to pay for early intervention services shall be obtained when the local lead agency or early intervention service provider seeks to use the parent's private insurance or benefits to pay for the initial provision of early intervention services and each time there is an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

C. The consent requirements in subsections A and B of this section shall also apply when use of private insurance is required prior to use of public benefits or public insurance.

D. If a parent is determined to be unable to pay and does not provide consent for use of private insurance, the lack of consent shall not be used to delay or deny any early intervention services to the child or family.

E. If the parent provides consent for use of the family's private insurance to pay for early intervention services, Part C or other funds may be used to pay for copayment or deductible amounts that exceed the family's monthly cap, unless the family has money in a flexible spending account that automatically pays the early intervention service provider or the family for these costs.

F. Families shall be responsible for paying their insurance premiums.

12VAC35-225-260. Written notification.

When obtaining parental consent for the provision of early intervention services or for use of public or private insurance or benefits, or both, the service coordinator shall ensure the parents receive written information on Virginia's system of payment policies, which includes the following:

1. Required notification to parents of children covered by Medicaid including:

a. Parental consent requirements in 12VAC35-225-240 B;

b. The cost protections in 12VAC35-225-240 C;

c. The local lead agency responsibility to offer the early intervention services to which the parent has provided consent even if the parent does not provide consent for use of public benefits or public insurance as specified in 12VAC35-225-240 E;

d. The parent's right to withdraw consent for disclosure, for billing purposes, of a child's personally identifiable information to the Department of Medical Assistance Services at any time; and

e. Categories of costs to parents as specified in 12VAC35-225-240 D.

2. Potential costs to the parent when their private insurance is used, which may include copayments, deductibles, premiums, or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy;

3. The payment system and schedule of sliding fees that may be charged to the parents for early intervention services;

4. The basis and amount of payments or fees;

5. Information on the determination of ability to pay and inability to pay, including when and how the determination is made;

6. Assurances regarding fees and service provision as specified in 12VAC35-225-230 A 1, A 3, A 4, and A 5;

7. The policy on failure to provide the required income information as specified in 12VAC35-225-230 A 6;

8. Policies regarding use of federal or state Part C funds to pay for costs such as insurance copayments or deductibles; and

9. Parent rights as specified in 12VAC35-225-230 C.

12VAC35-225-270. Billing and collections of family fees, public benefits, and insurance.

A. The local lead agency shall ensure billing for and collection of all family fees for the local early intervention system by:

1. Doing all billing and collection of family fees;

2. Contracting with a single entity to bill for and collect all family fees for the local early intervention system; or

3. Assigning the billing and collection of the family fee to a specific early intervention service provider for each child.

B. Early intervention service providers shall routinely, and no less than one time per month, confirm with families whether their insurance has changed and shall notify the local system manager immediately if a child who has or had Medicaid or FAMIS no longer has Medicaid or FAMIS or does not have the Medicaid early intervention benefit and notify the service coordinator if the child had TRICARE or private insurance coverage and the child no longer has that coverage or the child has newly acquired Medicaid or FAMIS, TRICARE, or private insurance coverage.

C. The local system manager, or his designee, shall provide oversight to ensure Medicaid or FAMIS information is correctly entered into the department's early intervention management information system, ITOTS, to begin and maintain enrollment in the Medicaid early intervention benefit.

12VAC35-225-280. Provider billing for early intervention services.

A. In order to receive reimbursement from federal or state Part C funds as the payor of last resort, early intervention service providers shall:

1. Have a contractual relationship with the local early intervention system; and

2. Submit a contact log or contact notes to the local lead agency no later than the 21st of each month for all services provided in the previous month, including any service for which reimbursement is sought from Part C funds.

B. Early intervention service providers shall accept Medicaid reimbursement for medically necessary early intervention services as payment in full.

C. In order to bill Medicaid for early intervention services other than service coordination, the provider shall:

1. Be certified as an early intervention practitioner;

2. Enroll with the Department of Medical Assistance Services as an early intervention provider;

3. Provide services to children who are determined eligible for early intervention services under Part C;

4. Provide covered services as listed on the child's IFSP and, with the exception of the assessment for service planning and IFSP meetings, services that are approved by a physician, physician's assistant, or nurse practitioner; and

5. Comply with all other applicable Department of Medical Assistance Services requirements.

D. In order to bill Medicaid for service coordination, the provider shall:

1. Be certified as an early intervention case manager;

2. Enroll with the Department of Medical Assistance Services as an early intervention provider;

3. Deliver service coordination in accordance with a signed initial early intervention service coordination plan or a signed individualized family service plan (IFSP);

4. Provide at least one activity during the month being billed to the child, the family, service providers, or other organizations on behalf of the child or family in order to coordinate supports and services and assist the family in accessing needed resources and services;

5. Document the contact or communication completely and correctly in accordance with 12VAC35-225-180;

6. Make a phone, email, text, or face-to-face contact with the family at least one time every three calendar months, or document attempts of such contacts;

7. Ensure documented face-to-face interaction between the service coordinator and the family at the development of the initial IFSP and the annual IFSP along with documentation that the service coordinator observed the

child during the calendar month that the IFSP meeting was held;

8. Submit the health status indicator questions to the child's physician every six months; and

9. Comply with all other applicable Department of Medical Assistance Services requirements.

E. Children who are dually enrolled in Virginia's early intervention system and in Medicaid or FAMIS shall receive service coordination under the early intervention targeted case management program.

Part VII
Procedural Safeguards

12VAC35-225-290. Notice of rights and procedural protections.

A. The service coordinator shall provide a written copy and explanation of the child's and family's rights and procedural safeguards at the intake visit and shall provide ongoing information and assistance to the family regarding their rights and procedural safeguards throughout the period of the child's eligibility for early intervention services.

B. The notice and explanation provided at the intake visit shall fully inform parents about the confidentiality requirements under Part C.

12VAC35-225-300. Surrogate parent selection.

A. A surrogate parent shall be assigned to a child if no parent of the child can be identified, the local system cannot after reasonable efforts locate a parent, or the child is a ward of the state. The service coordinator shall make reasonable efforts to ensure that a surrogate parent is assigned to the child within 30 days after determining the child needs a surrogate parent. In implementing the surrogate parent requirements, if the child is in foster care or a ward of the state, the service coordinator shall consult with the public agency that has been assigned care of the child.

B. The person selected as a surrogate parent shall:

1. Not be an employee of any public agency or early intervention service provider that provides early intervention services, education, care, or other services to the child or any member of the child's family;

2. Have no personal or professional interest that conflicts with the interest of the child he represents; and

3. Have knowledge and skills that ensure adequate representation of the child.

C. A surrogate parent assigned to a child pursuant to this section shall have the same rights as a parent for all purposes in the early intervention system.

12VAC35-225-310. Prior written notice.

A. Prior written notice shall be given to the parent at least five days before an early intervention provider proposes or refuses to initiate or change identification, eligibility determination, or placement of the child or the provision of early intervention services to the child or family.

B. The prior written notice shall be in sufficient detail to inform the parent of the action being proposed or refused, the reasons for taking the action, and available procedural safeguards, including dispute resolution options.

C. The prior written notice shall be written in language understandable to the general public and shall be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the parent does not use a written language, documentation of the procedures used to provide prior notice shall be included in a contact note.

12VAC35-225-320. Parental consents.

A. Written parental consent shall be obtained prior to (i) performing eligibility determinations and assessments; (ii) providing early intervention services; and (iii) disclosing personally identifiable information to anyone other than authorized representatives, officials, or employees of the department, local lead agency, or early intervention service providers collecting, maintaining, or using information under Part C and using public or private insurance or benefits. When seeking parental consent, the service coordinator shall ensure the following:

1. The parent is fully informed of all information relevant to the activity for which consent is sought, in the parent's native language;

2. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought;

3. The consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and

4. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time and that, if a parent revokes consent, that revocation is not retroactive.

B. The parent shall have the right to accept or decline specific early intervention services identified by the IFSP team and may decline a service after first accepting it without jeopardizing his right to obtain other early intervention services.

C. If a parent does not give consent for eligibility determination, assessment, or provision of early intervention services, the service coordinator shall document reasonable efforts to ensure that the parent is fully aware of the nature of the eligibility determination, assessment, or the services that would be available and understands the child will not be able to receive the eligibility determination, assessment, or services unless consent is given.

D. If a parent refuses to provide consent to disclose personally identifiable information, the service coordinator shall explain to the parent the impact of the parent's decision to refuse consent for the release of information, including

why consent is needed, how the information will be used, and how the absence of that information might affect the ability of the child to receive early intervention services. The explanation provided and the parent's final decision regarding consent to disclose the information shall be documented in a contact note.

E. Due process hearing procedures shall not be used to challenge a parent's refusal to provide any consent required under this section.

12VAC35-225-330. Early intervention records.

A. The local lead agency shall maintain a central early intervention record for each child referred to the local early intervention system. The central early intervention record must include the following:

1. Accurate demographic and referral information;

2. Signed releases and consents;

3. Other completed procedural safeguards forms;

4. A completed and signed initial early intervention service coordination plan if the child has Medicaid or FAMIS;

5. Assessment reports;

6. Medical reports;

7. All other documentation collected during eligibility determination and IFSP development, including reports from previous outside screenings and assessments;

8. Completed eligibility determination forms;

9. All IFSPs developed, including documentation of periodic reviews;

10. Contact logs or contact notes submitted by providers, including service coordinators;

11. Copies of all correspondence to and from the local lead agency or its providers with or on behalf of the family;

12. Court orders related to service provision, custody issues, or parental rights;

13. Documentation of the family's ability to pay, unless it is kept in a separate financial file; and

14. Record access log listings of any individual, except parents and authorized employees, obtaining access to the early intervention record, including the individual's name, date of access, and purpose of access.

B. Each early intervention service provider shall maintain a clinical working file that must include, at a minimum:

1. A copy of the IFSP, including annual and periodic reviews,

2. Contact notes, and

3. Any completed screening or assessment protocols if not housed in the early intervention record.

C. Early intervention service providers working in the provider agency where the central early intervention record is housed shall have the option to maintain the items listed in this section in the central early intervention record instead of in a separate clinical or working file.

12VAC35-225-340. Confidentiality of personally identifiable information.

A. The department, local lead agencies, and all early intervention service providers shall ensure the confidentiality of personally identifiable information collected, maintained, or used under Part C from the point in time when the child is referred to the local early intervention system until the later of when the provider agency is no longer required to maintain or no longer maintains that information under applicable federal and Virginia laws. Confidentiality shall be maintained at the collection, maintenance, use, storage, disclosure, and destruction stages.

B. One official at each local lead agency and each early intervention service provider shall assume responsibility for ensuring confidentiality of any personally identifiable information.

C. The department, local lead agency, and all early intervention service providers shall train all persons collecting or using personally identifiable information regarding federal and Virginia requirements for safeguarding records and personally identifiable information.

D. Each local lead agency and early intervention service provider shall maintain, for public inspection, a current listing of the names and positions of those employees within the local lead agency and early intervention service provider who have access to personally identifiable information.

12VAC35-225-350. Inspection and review of early intervention service records.

A. Parents of infants and toddlers who are referred to or receive early intervention services shall have the right to inspect and review all early intervention records collected, maintained, or used by the local lead agency or early intervention service providers, including records related to eligibility determination, assessments for service planning, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any other part of the child's early intervention record.

B. The local lead agency and early intervention service providers shall provide parents, upon request, a list of the types and locations of early intervention records collected, maintained, or used by the local lead agency and early intervention service providers.

C. If any early intervention record includes information on more than one child, the parent has the right to inspect and review only the information relating to his child or to be informed of that specific information.

D. The right to inspect and review records includes the right to:

1. A response from the local lead agency or early intervention service provider to reasonable requests for

explanations and interpretations of the early intervention records;

2. Request that the local lead agency or early intervention service provider provide copies of the early intervention records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

3. Have a representative of their choice inspect and review the records.

E. The local lead agency and early intervention service providers shall comply with a parent's request to inspect and review records without unnecessary delay, before any meeting regarding an IFSP or a due process hearing, and in no case more than 10 days after the request is made.

F. Upon request, the parent shall receive one copy of his child's early intervention record at no cost to the parent. After the parent has received one copy of the child's early intervention record at no cost, the local lead agency or early intervention service provider may charge a fee for additional copies. However, the local lead agency or early intervention service provider shall not charge a fee for additional copies of the child's records if the fee effectively prevents the parent from exercising his right to inspect and review those records. The local lead agency or early intervention service provider shall not charge a fee to search for or to retrieve information and shall provide at no cost to parents a copy of each eligibility determination, assessment, and IFSP as soon as possible after each IFSP meeting.

G. The local lead agency and early intervention service provider shall presume the parent has authority to inspect and review records relating to his child unless the local lead agency or early intervention service provider has been provided documentation that the parent does not have that authority under applicable Virginia laws governing such matters as custody, foster care, guardianship, separation, and divorce.

H. The local lead agency and early intervention service providers shall keep a record of parties obtaining access to early intervention records collected, maintained, or used by the early intervention system unless such access is by the parent or parents or authorized representatives and employees of the participating agency. The record of access shall include the name of the party accessing the record, the date access was given, and the purpose for which the party is authorized to use the early intervention record.

12VAC35-225-360. Request to amend information in the early intervention record.

A. A parent who believes that information in the early intervention records collected, maintained, or used in the early intervention system is inaccurate, misleading, or violates the privacy or other rights of the child or parent shall have the right to request that the agency that maintains the information amend the information.

B. When a parent requests that information in a record be amended, the local lead agency or early intervention service provider shall decide whether to amend the information in accordance with the request within a reasonable period of time after the request is received.

C. If the local lead agency or early intervention service provider refuses to amend the information in accordance with the request, the local lead agency or early intervention service provider shall inform the parent of the refusal and advise the parent of the right to a local hearing to challenge the information in his child's early intervention record.

1. A hearing shall be held within 30 days after the request is received by the local lead agency or early intervention service provider from the parent.

2. The parent shall be given written notice of the date, place, and time of the hearing at least 15 days before the hearing.

3. The hearing may be conducted by any person, including an official of the local lead agency or early intervention service provider, who does not have a direct interest in the outcome of the hearing.

4. The local lead agency or early intervention service provider shall give the parent a full and fair opportunity to present evidence relevant to the issues raised. The parent may, at his own expense, be assisted or represented by persons of his own choice, including an attorney.

5. The local lead agency or early intervention service provider shall issue its decision in writing to the parent within five business days after the conclusion of the hearing.

6. The decision of the local lead agency or early intervention service provider shall be based solely on the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

7. If the hearing determines that the information is inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the local lead agency or early intervention service provider shall amend the information accordingly and inform the parent in writing.

8. If the hearing determines that the information is accurate, not misleading, and not in violation of the privacy or other rights of the child or parent, the local lead agency or early intervention service provider shall inform the parent of the right to place in the early intervention record a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the local lead agency or early intervention service provider. Any such explanation placed in the early intervention record shall be maintained as part of the early intervention record as long as the record or contested portion is maintained by the agency. If the early intervention record or the contested portion of the record is disclosed by the local lead agency or early intervention

service provider to any party, the explanation shall also be disclosed to the party.

D. If the parent is not satisfied with the local hearing determination, the local lead agency or early intervention service provider shall advise the parent of his right to file a due process complaint with the department.

12VAC35-225-370. Maintenance of early intervention service records.

A. The local lead agency and early intervention service providers shall inform the parent when personally identifiable information collected, maintained, or used in the early intervention system is no longer needed to provide services to the child and shall destroy the information at the request of the parent.

B. A child's early intervention record shall be destroyed at the request of his parent. However, a permanent record of a child's name, date of birth, parent contact information, including address and phone number, names of service coordinator or coordinators, early intervention service provider or providers, and exit data, including year and age upon exit and any programs entered into upon exiting, may be maintained without time limitation.

C. The local lead agency and early intervention service providers shall ensure early intervention records are maintained for a minimum of three years following the child's discharge from the local early intervention system.

Part VIII
Dispute Resolution

12VAC35-225-380. Notification of complaint resolution options.

A. The department shall ensure the availability of procedures for resolving complaints through mediation, an administrative complaint, or a due process hearing.

B. The service coordinator shall inform the child's parent of all options for resolving complaints by providing written and verbal information that explains the options and the procedures for each and shall provide the parent with a contact at the department who can assist the parent in filing a complaint.

12VAC35-225-390. Mediation.

A. Mediation shall be voluntary on the part of all parties; shall be available at any time to parties to disputes involving any matter under Part C, including matters arising prior to the filing of a due process complaint; and shall not be used to delay or deny a parent's right to a due process hearing.

B. The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services and shall select mediators on a random or rotational basis.

C. An individual who serves as a mediator shall not be an employee of the department, a local lead agency, or an early intervention service provider that is involved in the provision of early intervention services or other services to the child and shall not have a personal or professional interest that conflicts with the person's objectivity. A person who otherwise qualifies as a mediator shall not be considered an employee of the department, a local lead agency, or an early intervention provider solely because he is paid by the agency to serve as a mediator.

D. The department shall appoint a trained and impartial mediator within five days of receiving the request for mediation.

E. Each session in mediation shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties involved in the dispute.

F. Mediation, including a written mediation agreement reflecting agreements reached by the parties to the dispute, shall be completed within 15 calendar days of the receipt by the department of notice that both parties have agreed to mediation. If resolution is not reached within 15 days, the department shall inform the parents in writing that they may request a due process hearing.

G. Extensions of the 15-day timeline may be granted for good cause. If there is a simultaneous request for mediation and a due process hearing, an extension shall not result in a violation of the 30-day timeline for completion of the due process hearing.

H. If the parties resolve the dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution, states that all discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent due process or civil proceeding, and is signed by both the parent and a representative of the local lead agency or early intervention service provider who has the authority to bind that agency.

I. The department shall bear the full cost of the mediation process.

12VAC35-225-400. Due process hearing.

A. Due process hearings shall be available to the parent of any child referred to the local early intervention system to resolve complaints regarding an early intervention provider's proposal or refusal to initiate or change his child's identification, eligibility determination, or placement or to the provision of early intervention services to the child or family.

B. The department shall arrange for the appointment of an impartial hearing officer within five days following receipt of a request for a due process hearing. The due process hearing officer shall:

1. Not be an employee of the department, a local lead agency, or an early intervention service provider involved in the provision of early intervention services or the care of the child. A person who is otherwise qualified shall not be considered an employee of the department, a local lead agency, or an early intervention provider solely because he

is paid by the agency to implement the due process hearing procedures;

2. Not have a personal or professional interest that conflicts with his objectivity in implementing the process;

3. Have knowledge about the provisions under Part C and the needs of and early intervention services available for children with disabilities and their families;

4. Listen to the presentation of relevant viewpoints about the due process complaint;

5. Examine information relevant to the issues;

6. Seek to reach a timely resolution of the due process complaint; and

7. Provide a record of the proceedings, including a written decision.

C. The due process hearing shall be carried out at a time and place that is reasonably convenient for the parent.

D. Any parent involved in a due process hearing shall have the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children with disabilities;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;

4. Obtain a written or electronic verbatim transcript of the hearing at no cost to the family; and

5. Receive a written copy of the findings of fact and decisions at no cost to the parent.

E. The due process hearing shall be conducted and a written decision shall be mailed to all parties within 30 days of receipt by the department of the parent's request for a due process hearing. The hearing officer may grant a specific extension of the timeline at the request of either party.

F. Any party aggrieved by the findings and decision issued pursuant to a due process hearing shall have the right to bring a civil action in Virginia or federal court.

G. During the pendency of any proceeding involving a due process complaint, unless the local lead agency and the parent of the child agree otherwise, the child shall continue to receive the appropriate early intervention services in the setting identified in the IFSP for which the parent has provided consent. If the due process complaint involves an application for initial services, the child shall receive those services that are not in dispute.

H. Costs for due process hearings shall be equally shared by the local lead agency and the department. The costs shared include expenses of the hearing officer (i.e., time, travel, secretarial, postal, and telephone expenses), expenses incurred by order of the hearing officer (i.e., independent educational evaluations, deposition, or transcript), and expenses for making a record of a hearing (i.e., hearing tapes).

I. The department shall not be responsible for expenses incurred for witnesses, except where hearing officers subpoena witnesses on their own initiative, or for the parent's attorney fees.

12VAC35-225-410. Administrative complaint.

A. An individual or organization, including those from another state, shall have the right to file an administrative complaint with the department alleging that the local lead agency, an early intervention service provider, or participating agency has violated a requirement of Part C.

B. The department shall widely disseminate to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, and other appropriate entities the procedures for filing and resolving administrative complaints.

C. An administrative complaint shall be made in writing to the department, allege a violation that occurred not more than one year prior to the date the complaint is received by the department, and include the following:

1. A statement that the department, local lead agency, or early intervention service provider has violated a requirement of Part C;

2. The facts on which the statement is based;

3. The signature and contact information for the complainant; and

4. If alleging violations with respect to a specific child, (i) the name and address of the child; (ii) the name of the early intervention service provider serving the child; (iii) a description of the problem, including facts related to the problem; and (iv) a proposed resolution to the problem to the extent known and available to the complainant if there is one at the time the complaint is filed.

D. The party filing the complaint shall forward a copy of the complaint to the local lead agency or the early intervention service provider serving the child at the same time the party files the complaint with the department.

E. Within 60 days after a complaint is received, the department shall:

1. Carry out an independent onsite investigation, if the department determines that an investigation is necessary;

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Provide the local lead agency other participating agency, or early intervention service provider with an opportunity to respond to the complaint within 10 days by providing a proposal to resolve the complaint and an opportunity to voluntarily engage in mediation;

4. Review all relevant information and make an independent determination as to whether the local lead agency, other participating agency, or early intervention service provider is violating a requirement of Part C; and

5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the final decision.

The final decision may include recommendations for technical assistance, negotiations, and corrective actions to achieve compliance, as well as timelines for completion.

If, in resolving an administrative complaint, the department finds a failure to provide appropriate early intervention services then the final decision shall address the corrective actions appropriate to address the needs of the child who is the subject of the complaint and his family, such as compensatory services or monetary reimbursement, and appropriate future provision of services for all children with disabilities and their families.

F. The 60-day timeline for resolving an administrative complaint may be extended only if exceptional circumstances exist with respect to a particular complaint or the parent (or individual or organization) and the local lead agency, other participating agency, or early intervention service provider involved in the complaint agree to extend the timeline to engage in mediation.

G. If the administrative complaint received by the department is also the subject of a due process hearing or contains multiple issues of which one or more are part of that due process hearing, the department shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint that is not part of the due process hearing shall be resolved using the 60-day time limit and the administrative complaint procedures.

H. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision shall be binding, and the department shall inform the complainant to that effect.

I. A complaint alleging the local lead agency's, other participating agency's, or early intervention service provider's failure to implement a due process hearing decision shall be resolved by the department.

J. A final decision of the department pursuant to this section shall be a final case decision that may be appealed pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-225-420. Appeal to the Department of Medical Assistance Services.

A. In addition to the dispute resolution options described in this chapter, Medicaid or FAMIS recipients shall have the right to file an appeal with the Department of Medical Assistance Services when they disagree with certain actions. Actions that may be appealed include:

1. Disagreement about the child's eligibility for services;

2. The provision of early intervention services, including those listed on the IFSP; and

3. The frequency, length, and intensity of services in the IFSP.

B. To ensure this right to appeal, the service coordinator shall provide the family with written information on the appeals process, regardless of whether or not the family expresses agreement or disagreement, if the child is found ineligible; the local system is refusing to initiate a service the family is requesting or is refusing to provide a service at the frequency or length desired by the family; or a service is decreased or ended, unless the family requested the service be decreased or ended.

C. Families shall follow all applicable Department of Medical Assistance Services requirements when filing an appeal.

Part IX

Early Intervention Practitioner Certification Requirements

12VAC35-225-430. Certification required for early intervention professionals and early intervention specialists.

A. Individual practitioners of early intervention services, with the exception of physicians, audiologists, and registered dietitians, shall be certified by the department as early intervention professionals or early intervention specialists.

B. Certified early intervention professionals shall have expertise in a discipline trained to enhance the development of children with a disability, as evidenced by state licensure, including application for state licensure if the discipline authorizes practice in Virginia while the application is pending and the individual practitioner meets all applicable requirements for such practice; state endorsement; or certification by a national professional organization. Qualified personnel in the following disciplines may seek certification from the department as early intervention professionals:

1. Counselors.

a. Licensed professional counselors licensed by the Virginia Board of Counseling; and

b. School counselors (Pre K - 12) endorsed by the Virginia Board of Education.

2. Behavior analysts licensed by the Virginia Board of Medicine.

3. Educators.

a. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Early Childhood (Birth - 5);

b. Educators licensed by the Virginia Board of Education with endorsement in Early/Primary Education (Pre K - 3 or NK - 4);

c. Educators licensed by the Virginia Board of Education with endorsement in Elementary Education (Pre K - 6);

d. Educators licensed by the Virginia Board of Education with endorsement in Career and Technical Education - Family and Consumer Services;

e. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Hearing Impairments (Pre K - 12);

f. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Visual Impairments (Pre K - 12);

g. Educators with a technical professional license issued by the Virginia Board of Education in Career and Technical Education - Family and Consumer Sciences;

h. Educators licensed by the Virginia Board of Education with Endorsement in adapted curriculum K - 12; and

i. Educators licensed by the Virginia Board of education with Endorsement in general curriculum K - 12.

4. Family and consumer science professionals certified through the American Association of Family and Consumer Sciences (AAFCS). Individuals certified by the AAFCS after June 30, 2009, shall meet certification requirements in family and consumer sciences - human development and family studies;

5. Marriage and family therapists licensed by the Virginia Board of Counseling;

6. Music therapists certified by the Certification Board for Music Therapists (CBMT);

7. Nurses.

a. Nurse practitioners licensed by the Virginia Board of Nursing; and

b. Registered nurses licensed by the Virginia Board of Nursing;

8. Occupational therapists licensed by the Virginia Board of Medicine;

9. Orientation and mobility specialists certified by the National Blindness Professional Certification Board as a National Orientation and Mobility Certificant (NOMC) or certified by the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP) as a Certified Orientation and Mobility Specialist (COMS);

10. Physical therapists licensed by the Virginia Board of Physical Therapy;

11. Psychologists.

a. Applied psychologists licensed by the Virginia Board of Psychology;

b. Clinical psychologists licensed by the Virginia Board of Psychology; and

c. School psychologists licensed by the Virginia State Board of Education with an endorsement in school psychology;

12. Social workers.

a. Licensed clinical social workers licensed by the Virginia Board of Social Work; and

b. School social workers licensed by the Virginia State Board of Education with an endorsement as a school social worker;

13. Speech-language pathologists licensed by the Virginia Board of Audiology and Speech-Language Pathology; and

14. Therapeutic recreation specialists certified by the National Council on Therapeutic Recreation.

C. Certified early intervention specialists shall hold a minimum of a high school diploma or general equivalency diploma. Qualified personnel in the following disciplines may seek certification from the department as early intervention specialists:

1. Assistant behavior analysts licensed by the Virginia Board of Medicine.

2. Early intervention assistants whose qualifications have been approved by the Department of Behavioral Health and Developmental Services.

3. Licensed social workers licensed by the Virginia Board of Social Work.

4. Nurses.

a. Certified nurse aides certified by the Virginia Board of Nursing; and

b. Licensed practical nurses licensed by the Virginia Board of Nursing.

5. Occupational therapy assistants licensed by the Virginia Board of Medicine.

6. Physical therapy assistants licensed by the Virginia Board of Physical Therapy.

D. Certified early intervention professionals and certified early intervention specialists shall demonstrate knowledge of early intervention principles and practices, including infant and toddler development, family-centered practice and multidisciplinary team practice, by successful completion of the early intervention principles and practices online training modules administered by the department. A score of at least 80% accuracy on each module's competency test shall be required for successful completion.

12VAC35-225-440. Supervision requirements.

A. Certified early intervention professionals providing supervision to other early intervention personnel shall complete the supervision training administered by the department. A score of at least 80% accuracy on the competency test shall be required for successful completion.

B. Certified early intervention specialists shall work under the supervision of a certified early intervention professional who has completed the required supervision training.

12VAC35-225-450. Certification required for early intervention service coordinators.

A. Individual practitioners who provide service coordination to children enrolled in early intervention services shall be certified by the department as early intervention case managers.

B. Certified early intervention case managers shall hold:

1. A minimum of an undergraduate degree in any of the following fields:

a. Allied health, including rehabilitation counseling, recreation therapy, occupational therapy, physical therapy, or speech or language pathology;

b. Child and family studies;

c. Counseling;

d. Early childhood;

e. Early childhood growth and development;

f. Early childhood special education;

g. Human development;

h. Human services;

i. Nursing;

j. Psychology;

k. Public health;

l. Social work;

m. Special education - hearing impairments;

n. Special education - visual impairments; or

o. Other related field or interdisciplinary studies approved by the department;

2. An associate degree in a related field such as occupational therapy assistant, physical therapy assistant, or nursing; or

3. A high school diploma or general equivalency diploma, or an undergraduate degree in an unrelated field, plus three years' full-time experience, at least 32 hours per week, coordinating direct services to children and families and implementing individual service plans. Direct services address issues related to developmental and physical disabilities, behavioral health or educational needs, or medical conditions. Experience may include supervised internships, practicums, or other field placements.

C. Qualified persons shall demonstrate:

1. Expertise in the provision of service coordination services, as evidenced by successful completion of case management training approved by the department. A score of at least 80% accuracy on the case management training competency test shall be required for successful completion.

2. Knowledge of early intervention principles and practices, including infant and toddler development, family-centered practice and multidisciplinary team practice, by successful completion of the early intervention principles and practices online training modules administered by the department. A score of at least 80% accuracy on each module's competency test shall be required for successful completion.

12VAC35-225-460. Initial certification and recertification processes.

A. To apply for initial certification as an early intervention professional, early intervention specialist, or early intervention case manager, applicants shall:

1. Obtain the designated early intervention certification application package from the department; and

2. Submit a completed and signed application package to the department with:

a. A signed assurance that the applicant will comply with all federal and state early intervention requirements;

b. Documentation of the applicant's educational credentials, professional certification, licensing, endorsement, or other qualification for the practice of his discipline in the Commonwealth of Virginia; and

c. Documentation of the applicant's successful completion of the training required by the department.

B. Any initial certification granted to a person who has made application for state certification, licensure, endorsement, or other qualification in his discipline and is awaiting licensure shall be valid only as long as that person meets the requirements of his discipline to practice in Virginia.

C. Three-year recertification. At least 30 days prior to the expiration of the practitioner's certification period, the certified early intervention practitioner shall submit an application for recertification to the department. This application shall include:

1. Documentation of the practitioner's continuing professional certification, licensing, endorsement, or other qualification for the practice of his discipline in the Commonwealth of Virginia; and

2. Documentation that the practitioner has successfully completed at least 30 hours of continuing learning activities during the three-year certification period. The continuing learning activities shall address one or more of the following: (i) evidenced-based practices in early intervention services; (ii) changes in federal or state law, regulations, or practice requirements; (iii) topics identified on a personal development plan; (iv) training needed for new responsibilities relating to early intervention services; and (v) training required by the department. For each continuing learning activity, documentation shall include a description of the activity and sponsoring organization, if applicable; the date or dates of training; the number of

hours; and a copy of a certificate or verification of attendance, if applicable.

12VAC35-225-470. Notice of decision on application for certification or recertification.

The department shall provide written notice of the decision on the application for certification or recertification within 30 days of the receipt of a completed application and required documentation.

12VAC35-225-480. Early intervention practitioner database.

Early intervention practitioners meeting the requirements for certification shall be included in the practitioner database maintained by the department. Early intervention practitioners are responsible for notifying the department of any change that may affect their early intervention certification status or their participation in Virginia's early intervention services system.

12VAC35-225-490. Restoration of expired certifications.

A. An early intervention practitioner whose early intervention certification has expired may apply to the department for restoration of certification.

B. The department may restore early intervention certification for an early intervention practitioner under the following conditions:

1. The individual's early intervention certification has been lapsed for a period of less than one year; and

2. The early intervention certification:

a. Has lapsed because the early intervention practitioner failed to complete the three-year recertification requirements and the practitioner provides documentation to the department demonstrating (i) he is currently qualified for the practice of his discipline in the Commonwealth of Virginia and (ii) he has completed at least 30 hours of training addressing one or more of the topics specified in 12VAC35-225-460 C 2; or

b. Has lapsed because the early intervention practitioner's discipline-specific qualification expired and the practitioner provides documentation to the department demonstrating that he now holds a current license, certification, endorsement, or other qualification for the practice of his discipline in the Commonwealth of Virginia.

C. The department shall provide written notice of its decision to approve or deny the early intervention practitioner's request for restoration of his early intervention certificate within 30 days after the department receives a completed request and all required documentation.

D. Upon restoration of the practitioner's early intervention certification, the department shall record the active status of the certification in the practitioner database maintained by the department.

12VAC35-225-500. Termination of certification.

A. The department shall terminate an early intervention practitioner's early intervention certification under the following circumstances:

1. The practitioner's discipline-specific license, certification, or endorsement has been suspended, revoked, or otherwise terminated by the appropriate Virginia health regulatory board or other Virginia entity exercising appropriate authority over the practitioner's discipline-specific license, certification, or endorsement; or

2. The practitioner fails to comply with his signed assurance that he will comply with all federal and state early intervention requirements.

B. The department shall notify the early intervention practitioner in writing of the date of and reason for termination and that the practitioner has been removed from the practitioner database maintained by the department.

12VAC35-225-510. Reconsideration of decision to deny or terminate certification.

A. In the event that the early intervention practitioner disagrees with the determination to deny or terminate certification, he may request reconsideration from the commissioner. The request shall be made in writing within 30 days of the date of the written notice of denial or termination and may include relevant additional information or documentation to support the request.

B. The commissioner shall review the request for reconsideration and information presented and issue a decision in writing within 30 business days following receipt of the request. The decision of the commissioner shall be a final case decision that may be appealed under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Part X
Comprehensive System of Personnel Development

12VAC35-225-520. Comprehensive system of personnel development requirements.

A. The department shall ensure a comprehensive system of personnel development that includes the following:

1. Training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in Virginia;

2. Training local lead agencies and early intervention service providers to implement innovative strategies and activities for the recruitment and retention of early intervention service practitioners and service providers;

3. Promoting the preparation of early intervention practitioners and service providers who are fully and appropriately qualified to provide early intervention services; and

4. Training local lead agencies and early intervention practitioners and service providers to coordinate transition

services for children with disabilities who are transitioning from the early intervention system under Part C to a preschool program under § 619 of the Individuals with Disabilities Education Act, Head Start, Early Head Start, or another appropriate program.

B. The department shall establish and maintain an integrated training collaborative that includes university faculty, parents, early intervention service providers, and state early intervention professional development specialists to develop and implement professional development opportunities, materials, and resources on evidence-based practices for early intervention practitioners and service providers, families, university students, paraprofessionals, and primary referral sources.

C. The department shall use a variety of mechanisms to ensure awareness about and access to professional development, support, and resources, including statewide conferences and meetings, regional and local training activities, web-based training modules and resources, a written monthly update listing available resources and training, and teleconference and webinar capabilities.

D. The department shall support recruiting and retaining early intervention practitioners and service providers.

Part XI
Lead Agency Oversight Responsibilities

12VAC35-225-530. Lead agency monitoring and supervision.

A. The department shall monitor implementation of and enforce the requirements under Part C, make determinations annually about the performance of each local early intervention system, and report annually to the public on the performance of Virginia and of each local early intervention system within 120 days of submitting Virginia's annual performance report to the U.S. Department of Education.

B. The primary focus of monitoring activities shall be on improving early intervention results and functional outcomes for all children with disabilities and their families and ensuring that local early intervention systems meet the requirements under Part C.

C. The department shall use quantifiable indicators and, as needed, qualitative indicators to measure performance in providing early intervention services in natural environments, child find, effective monitoring, the use of mediation, and transition services.

D. The local lead agency and early intervention service providers shall cooperate fully with the department and shall provide all information requested by the department or its designee to monitor local performance and compliance with applicable state and federal regulations.

E. The department shall ensure that when it identifies noncompliance, the noncompliance is corrected as soon as possible and in no case later than one year after the noncompliance was identified.

F. If a local early intervention system is determined to need assistance for two or more consecutive years, need intervention, or need substantial intervention in meeting the requirements under Part C, or if the local early intervention system fails to correct noncompliance within one year of identification, then the department shall enforce the requirements under Part C using one or more enforcement actions that may include the following:

1. Technical assistance;

2. Imposing conditions on the local early intervention system's funding;

3. Requiring the development and implementation of an improvement plan; or

4. Withholding funds in whole or in part.

12VAC35-225-540. Data collection and reporting.

A. The department shall collect, compile, and report timely, accurate, valid, and reliable data as needed to meet the data collection requirements of the U.S. Department of Education and the Virginia General Assembly.

B. The department shall not report any data that would result in the disclosure of personally identifiable information about individual children.

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 (12VAC35-225)

Infant & Toddler Connection of Virginia Eligibility Determination Form (eff. 6/2012)

Early Intervention Certification Application (undated)

VA.R. Doc. No. R15-3889; Filed December 16, 2015, 1:29 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the State Corporation Commission. 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 to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **14VAC5-200. Rules Governing Long-Term Care Insurance.**

Agency Contact: Robert Grissom, Chief Insurance Market Examiner, Market Regulation, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov.

FORMS (14VAC5-200)

Rescission Reporting Form, Form A (eff. 2/02)

Long-Term Care Insurance Personal Worksheet, Form B (rev. 4/15)

Things You Should Know Before You Buy Long-Term Care Insurance, Form (rev. 9/07)

Long-Term Care Insurance Suitability Letter, Form D (rev. 2/02)

Claims Denial Reporting Form, Form E (rev. 4/15)

~~Potential Rate Increase Disclosure Form, Form F (rev. 9/07)~~

Potential Rate Increase Disclosure Form, Form F (rev. 12/2015)

Replacement and Lapse Reporting Form, Form G (eff. 9/07)

Partnership Program Notice, Form 200-A (eff. 9/07)

Partnership Disclosure Notice, Form 200-B (eff. 9/07)

Long-Term Care Partnership Certification Form, Form 200-C (rev. 4/15)

VA.R. Doc. No. R16-4599; Filed December 11, 2015, 12:05 p.m.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA WORKERS' COMPENSATION COMMISSION

Emergency Regulation

Title of Regulation: **16VAC30-50. Rules of the Virginia Workers' Compensation Commission (amending 16VAC30-50-150).**

Statutory Authority: § 65.2-201 of the Code of Virginia; Chapter 456 of the 2015 Acts of Assembly.

Effective Dates: January 11, 2016, through July 11, 2017.

Agency Contact: Jim Szablewicz, Chief Deputy Commissioner, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23030, telephone (804) 367-8664, or email james.szablewicz@workcomp.virginia.gov.

Preamble:

Section 65.2-605 of the Code of Virginia was amended by Chapter 456 of the 2015 Acts of Assembly to include a new subsection B, which requires the Virginia Workers' Compensation Commission to "...determine the number and geographic area of communities across the Commonwealth." Enactment clause 2 of Chapter 456 requires the commission to promulgate regulations to implement the provisions of Chapter 456 to be effective within 280 days of its enactment and to provide an opportunity for public comment on the regulations prior to adoption.

Section 65.2-605 provides in pertinent part that "The pecuniary liability of the employer for medical, surgical, and hospital service herein required when ordered by the Commission shall be limited to such charges as prevail in the same community for similar treatment when such treatment is paid for by the injured person..." This is generally referred to as the "prevailing community rate" standard. 16VAC30-50-150 (Rule 14) exists to divide the Commonwealth into defined communities for the purpose of determining the prevailing community rate. Rule 14 divides the Commonwealth into 15 defined communities based on planning district commission districts. However, because of their number, in many cases there is insufficient data available within the current communities to determine the prevailing community rate for particular medical services within that community. The proposed amendment reduces the number of defined communities to five, based on health planning districts and geographic contiguity, thereby expanding the data available within each community for determining the prevailing community rate for medical services rendered to injured workers within that community.

The proposed amendment reduces the number of communities for the purposes of determining the liability of employers and insurers for the cost of medical services rendered to injured workers pursuant to § 65.2-605 of the Code of Virginia from 15 communities based on planning district commission districts to five communities based on health planning districts and geographic contiguity.

The change is needed to (i) reduce the amount of litigation over prevailing community rates in specific workers' compensation cases, which litigation has been increasing over the past several years; (ii) provide sufficient data to determine the prevailing community rate in those cases that must be litigated; and (iii) bring greater certainty and clarity to the determination of prevailing community rates for medical services rendered to injured workers.

16VAC30-50-150. Rule 14. Definition of community.

For the purpose of § 65.2-605 of the Code of Virginia, the word "community" shall mean ~~one or more planning districts as set forth below.~~ groups of three-digit Virginia zip codes as follows:

~~Community Planning District(s)~~	
~~1~~	~~Districts 1 and 2~~
~~2~~	~~District 3~~
~~3~~	~~District 4~~

~~4~~	~~District 5~~
~~5~~	~~Districts 11 and 13~~
~~6~~	~~District 12~~
~~7~~	~~District 6~~
~~8~~	~~District 7~~
~~9~~	~~District 16~~
~~10~~	~~Districts 9 and 10~~
~~11~~	~~District 8~~
~~12~~	~~Districts 17 and 18~~
~~13~~	~~Districts 22 and 23~~
~~14~~	~~Districts 14 and 15~~
~~15~~	~~District 19~~

~~Whenever an employee receives treatment outside of the Commonwealth, the commission will determine the appropriate community in the state or territory where the treatment is rendered upon application of either the employee, employer (or its representative), or medical provider.~~

~~When the commission deems appropriate, it may consider additional data to determine the prevailing community rate.~~

COMMUNITY	THREE-DIGIT ZIP CODES
1 – Northern	201, 220, 221, 222, 223
2 – Northwest	224, 225, 226, 227, 228, 229, 244
3 – Central	230, 231, 232, 238, 239
4 – Eastern	233, 234, 235, 236, 237
5 – Southwest	240, 241, 242, 243, 244, 245, 246

Pursuant to subsection G of § 65.2-605.1 of the Code of the Virginia, the community applicable to services rendered by a health care provider outside of the Commonwealth of Virginia shall be deemed to be that associated with the principal place of business of the employer if located in the Commonwealth of Virginia, or if no such location exists, then that associated with the location where the commission hearing regarding a dispute involving those services is conducted.

The commission may consider additional data to determine the prevailing community rate when appropriate.

VA.R. Doc. No. R16-4565; Filed December 11, 2015, 4:15 p.m.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

DEPARTMENT OF HISTORIC RESOURCES

Final Regulation

Title of Regulation: **17VAC10-30. Historic Rehabilitation Tax Credit (amending 17VAC10-30-10 through 17VAC10-30-160).**

Statutory Authority: §§ 10.1-2202 and 58.1-339.2 of the Code of Virginia.

Effective Date: February 10, 2016.

Agency Contact: Elizabeth Tune, Manager, Office of Preservation Incentives, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6093, FAX (804) 367-2391, TTY (804) 367-2386, or email elizabeth.tune@dhr.virginia.gov.

Summary:

The amendments to the regulations governing historic property rehabilitation tax credits (i) make numerous clarifying changes; (ii) revise the fee structure and increase fees charged by the department for reviewing rehabilitation certification requests; (iii) provide separate audit reporting and review procedures for projects with rehabilitation expenses of $500,000 or more and for projects with rehabilitation expenses of less than $500,000; and (iv) change the eligibility date for the tax credit for incurred rehabilitation expenses from January 1, 1997, and later to January 1, 2003, and later.

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.

17VAC10-30-10. Definitions.

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

"Certified historic structure" means a building listed on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register, or certified by the Director of the Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register. Portions of buildings, such as single condominium apartment units, are not independently eligible for certification as a certified historic structure. Rowhouses, even with abutting or party walls, are eligible for certification as a certified historic structure.

"Certified rehabilitation" means any rehabilitation of a certified historic structure that is certified by the Department of Historic Resources as consistent with ~~The~~ the Secretary of

the Interior's Standards for Rehabilitation (36 CFR [~~Part~~] ~~67)~~ 67.7).

"Commonwealth" means the Commonwealth of Virginia.

"Completion date" means the date the last eligible rehabilitation expense is incurred or the final certificate of occupancy (if appropriate) is issued.

"Completion year" means the calendar year in which the last eligible rehabilitation expense is incurred or the final certificate of occupancy (if appropriate) is issued.

"Department" means the Virginia Department of Historic Resources.

"Eligible rehabilitation expenses" means expenses as described in 17VAC10-30-110 incurred by a taxpayer in the material rehabilitation of a certified historic structure and added to the property's capital account.

"Historic district" means any district listed on the Virginia Landmarks Register by the Historic Resources Board according to the procedures specified in Chapter 22 (§ 10.1-2200 et seq.) of Title 10.1 of the Code of Virginia.

"Inspection" means a visit by an authorized representative of the Department of Historic Resources to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

"Material rehabilitation" means improvements or reconstruction consistent with ~~The~~ the Secretary of the Interior's Standards for Rehabilitation (36 CFR [~~Part~~] ~~67)~~ 67.7), the cost of which amounts to at least 50% of the assessed value of the building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least 25% of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses. Material rehabilitation does not include enlargement or new construction.

"Owner" means the person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the Department of Taxation for purposes of the applicable tax benefits.

"Owner-occupied building" means any building, at least 75% of which is used as a personal residence by the owner, or which is available for occupancy by the owner for at least 75% of the year.

"Plan of rehabilitation" means a plan pursuant to which a certified historic structure will be materially rehabilitated.

"Program" means the Virginia Historic Rehabilitation Tax Credit Program.

"Property" means a building and its site, environment, and landscape features.

"Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, ~~which~~ that makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historical, architectural, and cultural values as determined by the Department of Historic Resources.

"Standards for Rehabilitation" means ~~The~~ the Secretary of the Interior's Standards for Rehabilitation (36 CFR [~~Part~~] ~~67),~~ 67.7) established by the ~~United States~~ U.S. Department of the Interior.

"Start of rehabilitation" means the date upon which the taxpayer applies for the building permit for the work contemplated by the plan of rehabilitation, or the date upon which actual work contemplated by the plan of rehabilitation begins.

"Virginia Landmarks Register" means the list of historic landmarks, buildings, structures, districts, objects, and sites designated by the Virginia Landmarks Board, in accord with the procedures specified in Chapter 22 (§ 10.1-2200 et seq.) of Title 10.1 of the Code of Virginia.

"Work" means improvement, reconstruction, repair, rehabilitation, or any other alteration to a building.

17VAC10-30-20. Introduction to certifications of significance and rehabilitation.

A. Individuals, estates, partnerships, trusts, or corporations may apply for certification of historic significance and certification of rehabilitations.

B. Requests for certifications of historic significance and of rehabilitations shall be made on the Historic Preservation Certification Application forms. Part 1 of the application, Evaluation of Significance, is used to request certification of historic significance. Part 2 of the application, Description of Rehabilitation, is used to request certification of a proposed rehabilitation project. Part 3 of the application, Request for Certification of Completed Work, is used to request certification of a completed rehabilitation project. If a rehabilitation project is completed before preparing Part 2 of the application, the ~~applicant~~ owner shall prepare and submit Parts 2 and 3 simultaneously.

C. The Historic Preservation Certification Application forms are available from the Department of Historic Resources, as well as on the department's website at www.dhr.virginia.gov.

D. The department generally completes reviews of certification requests within 30 days of receiving a complete, adequately documented application. Where adequate information is not provided, the department will notify the ~~applicant~~ owner of the additional information needed to complete the review. The department will adhere to this time period as closely as possible, but it is not mandatory, and the failure to complete a review within the designated period does not waive or alter any certification requirement. Expedited review of projects is available upon request as set forth in 17VAC10-30-80.

E. Certifications are only given in writing by duly authorized officials of the Department of Historic Resources. Decisions with respect to certifications are made on the basis of the information contained in the application form and other available information.

17VAC10-30-30. Certifications of historic significance.

A. Any property owner may consult with the Department of Historic Resources to determine whether a property is listed individually on the Virginia Landmarks Register, or whether a property is located within a historic district that is listed on the Virginia Landmarks Register.

B. Properties listed individually on the Virginia Landmarks Register are certified historic structures. For individually listed properties that contain more than one building or structure, the owner shall prepare Part 1 of the Historic Preservation Certification Application, "Evaluation of Significance," according to the instructions accompanying the application, describe each building and structure present, and provide information, including:

1. Name and mailing address of the owner;

2. Name and address of the property;

3. Current photographs of each building and structure, and its site, showing exterior and interior features and spaces adequate to document the building's or structure's significance;

4. Brief description of the appearance of the building or structure, including alterations, characteristic features, and estimated date or dates of construction;

6. Brief statement of significance, summarizing how the building or structure reflects the recognized historic values of the property;

7. Map showing the location of each building or structure on the property; and

8. Signature of the owner requesting certification.

C. For properties located in registered historic districts, the applicant shall request that the Department of Historic Resources determine whether the property is of historic significance to the district. The applicant shall prepare Part 1 of the Historic Preservation Certification Application form according to the instructions accompanying the application, including:

1. Name and mailing address of the owner;

2. Name and address of the property;

3. Name of the historic district;

4. Current photographs of the building and its site, showing exterior and interior features and spaces adequate to document the property's significance;

5. Brief description of the appearance of the property, including alterations, characteristic features, and estimated date or dates of construction;

6. Brief statement of significance, summarizing how the property reflects the recognized historic values of the historic district;

7. Map showing the location of the property within the historic district; and

8. Signature of the owner requesting certification.

D. Properties containing more than one building, where the department determines that the buildings have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure, whether the property is individually listed in the Virginia Landmarks Register or is located within a registered historic district. Buildings that are functionally related historically are those that have functioned together to serve an overall purpose during the property's period of significance. In determining the value of the property under 17VAC10-30-100, each building will be assessed individually. All buildings on the property are not required to be rehabilitated in order for the owner to participate in the program. However, the work at each building for which tax credits are sought must be a material rehabilitation.

E. Properties within registered historic districts will be evaluated to determine if they contribute to the historic significance of the district by application of the standards set forth in 17VAC10-30-40.

F. Owners of properties that are not listed on the Virginia Landmarks Register may request a determination from the department as to whether the property meets the criteria for listing on the Virginia Landmarks Register. The department will provide written notification to the ~~applicant~~ owner of determinations of eligibility. ~~Individual properties~~ Wherever appropriate, the Director of the Department of Historic Resources may determine eligibility at his sole discretion. Properties determined by the department to be eligible for individual listing in the Virginia Landmarks Register are certified historic structures.

G. Owners of properties that are located in potential historic districts may request preliminary determinations from the department as to whether the potential historic district meets the criteria for listing on the Virginia Landmarks Register. Owners of properties located in districts determined to be eligible for listing may apply for preliminary certification of their properties, as specified in 17VAC10-30-40. Applications for preliminary certification of buildings within eligible historic districts must show how the district meets the criteria for listing on the Virginia Landmarks Register, and how the property contributes to the significance of that district, as specified in 17VAC10-30-40. Preliminary certifications will become final, and the properties will become certified historic structures, as of the date of listing the district on the Virginia Landmarks Register. Issuance of preliminary certification does not obligate the department to nominate the potential district. ~~Applicants~~ Owners proceed

with rehabilitation projects at their own risk; if the historic district is not listed ~~in~~ on the Virginia Landmarks Register, the preliminary certification will not become final.

H. Owners of properties that have received preliminary certifications may apply for certification of rehabilitation projects, as specified in 17VAC10-30-50. Final certifications of rehabilitations will be issued only for certified historic structures.

I. A request for certification of historic significance may be submitted by an applicant who is not the owner of the property in question. In such cases, the applicant shall include a signed statement from the owner acknowledging the request for certification.

J. The Department of Historic Resources discourages the moving of historic buildings from their original sites. Under certain circumstances the relocation of historic buildings may be part of a historic rehabilitation project that can be certified. Building owners are advised that the relocation of a building that is listed ~~in~~ on the Virginia Landmarks Register may result in removal of the building from the Register. The relocation of a building that has been determined eligible for listing in the Virginia Landmarks Register may result in the loss of its eligibility. The relocation of a historic building into, from, or within a historic district or to or from an individual property listed ~~in~~ on the Virginia Landmarks Register, or that has been found eligible for listing, may result in removal of the district or property from the Register, loss of the eligibility of the district or property, or loss of the moved building's contributing status within the district or as part of the property. For historic rehabilitation projects involving moved buildings, the following procedures apply:

1. When a building is to be moved as part of a historic rehabilitation project for which certification is sought, the owner shall contact the department prior to moving the building~~,~~ and shall follow procedures specified by the department. It is recommended that the owner receive approval of the relocation plan by the department prior to relocation of the building, as improper relocation may result in denial of certification for the project. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment. In certain special cases, when there is adequate documentation about the building before its relocation and about the moving process, it may be possible to certify historic rehabilitation projects involving moved buildings when participation of the department prior to the move did not occur. However, this approach is not recommended, and owners pursue it at their own risk.

2. For individual properties and properties in historic districts not listed in the Virginia Landmarks Register or not previously found eligible for listing, prior to the move the owner shall submit Part 1 of the ~~historic rehabilitation application~~ Historic Preservation Certification Application to the department, according to subsections C, F, and G of this section.

3. For individual properties and properties in historic districts listed in the Virginia Landmarks Register or found eligible for listing, prior to the move the owner shall submit documentation to the department to determine whether the move is likely to result in the loss of listing or loss of eligibility for listing. Guidance on the type of documentation required can be obtained from the department.

4. Following the relocation of the building and its installation on a new site, reevaluation of the building will be necessary prior to rehabilitation to determine whether it ~~can become~~ is a certified historic structure. The owner shall submit Part 1 of the ~~historic rehabilitation application~~ Historic Preservation Certification Application to the department, according to subsections C, F, and G of this section, presenting information about the building in its new location.

5. The relocation of a historic building into, from, or within a listed or eligible historic district, or to or from an individually listed or eligible property, may result in alterations to the boundary definitions of the district or property~~,~~ and will change the inventory of buildings in the district or on the individual property. The ~~applicant~~ owner applying for certification of the historic rehabilitation project involving building relocation will be responsible for amending the district or property information and nomination accordingly, following guidance provided by the department.

17VAC10-30-40. Standards for evaluating significance within registered historic districts.

A. Some properties listed ~~in~~ on the Virginia Landmarks Register, primarily historic districts, are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually. Accordingly, this type of documentation is not conclusive for the purposes of this part. The ~~applicant~~ owner shall supplement this documentation using Part 1 of the Historic Preservation Certification Application, providing information on the significance of the specific property, as set forth in 17VAC10-30-30 C.

B. The Department of Historic Resources evaluates properties located within registered historic districts to determine if they contribute to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district is one ~~which~~ that by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development.

2. A property not contributing to the historic significance of a district is one that does not add to the district's sense of time and place and historical development~~;~~, or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

3. Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

C. Certifications of significance will be made on the appearance and condition of the property before the beginning of the rehabilitation work.

D. If a nonhistoric surface material obscures a building's facade, it may be necessary for the owner to remove all or a portion of the surface material before requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the significance of the historic district, it will be determined to be a certified historic structure.

17VAC10-30-50. Certifications of rehabilitation.

A. ~~Applicants~~ Owners requesting certification of rehabilitation projects shall comply with the procedures ~~listed below~~ described in this section. A fee, described in 17VAC10-30-80, is charged by the Department of Historic Resources for reviewing all proposed, ongoing, and completed rehabilitation work. No certification decisions shall be issued to any ~~applicant~~ owner until the appropriate remittance is received. ~~Applicants~~ Owners may request the department's review before, during, or after completion of a rehabilitation project. ~~Applicants~~ Owners are strongly encouraged to request the department's review before beginning a rehabilitation project. Though owners may begin work prior to review by the department, the department cannot guarantee in any way that such work will be certified for tax credits. Such work is undertaken at the risk of the owner.

1. To request review of a rehabilitation project, the project ~~applicant~~ owner shall submit Part 2 of the Historic Preservation Certification Application ~~form~~, "Description of Rehabilitation," according to the instructions accompanying the application. Documentation, including photographs adequate to document the appearance of the structure, both on the interior and the exterior, and its site and environment before rehabilitation, shall accompany the application. Other documentation, including plans, specifications, ~~and~~ surveys, renderings, and sight-line studies, may be required to evaluate ~~certain~~ rehabilitation projects. In the event of any discrepancy between the application and other supplementary material submitted with it (such as architectural plans, drawings, and specifications), the application shall take precedence. ~~Where~~ If necessary documentation is not provided~~,~~ and review and evaluation ~~may~~ are not ~~be~~ possible ~~and~~, a denial of certification will be issued on the basis of lack of information. Because the circumstances of each rehabilitation project are unique, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by ~~applicants~~ owners as applicable to other projects.

2. To request certification of a completed rehabilitation project, the ~~applicant~~ owner shall submit Part 3 of the Historic Preservation Certification Application, "Request for Certification of Completed Work," according to the instructions accompanying the application, and provide documentation that the completed project is consistent with the work described in Part 2. This documentation includes but is not limited to:

a. Name and mailing address or addresses of the owner or owners;

b. Name and address of the property;

c. ~~Photographs~~ Comprehensive photographs of the property showing the completed rehabilitation work, including exterior and interior features and spaces~~,~~ ~~sufficient~~ to demonstrate that the completed work is consistent with the ~~standards~~ Standards for ~~rehabilitation~~ Rehabilitation;

d. Assessed value of the building in the year preceding the start of rehabilitation;

e. Final costs attributed to the rehabilitation work (see 17VAC10-30-110 for information on eligible expenses);

f. ~~When rehabilitation expenses exceed $100,000, certification~~ For a project with (i) rehabilitation expenses of [~~$250,000~~ $500,000] or greater, a report of an audit of the rehabilitation expenses by ~~a~~ an independent certified public accountant ~~or equivalent of the actual costs attributed to the rehabilitation of the historic structure~~ in accordance with the department's Rehabilitation Tax Credit Program Certification Requirements, dated [~~January~~ October] 2015; ~~and~~ or (ii) less than [~~$250,000~~ $500,000] in rehabilitation expenses, an agreed-upon procedures engagement report of the rehabilitation expenses by an independent certified public accountant in accordance with the department's Rehabilitation Tax Credit Program Certification Requirements, dated [~~January~~ October] 2015;

g. Signature of the ~~applicant~~ owner. By signing the application, the owner declares that the information stated is correct to the best of the owner's knowledge. Submission of false records or falsification of anything in communications with the department is grounds for denial of the certification of completed work and is

punishable under Virginia law [~~or~~ and] federal law. The department shall submit any relevant information in its possession to the appropriate law-enforcement officials or governmental agencies as necessary; and

h. At the department's request, any additional information relevant to determining whether a project meets the requirements of the program. This includes the department's right to inspect the property upon reasonable notice.

B. Each rehabilitation project shall be done according to a plan of rehabilitation. Although the department has not set any formal requirements for a plan of rehabilitation, every plan shall include, at a minimum, the name of the owner of the property, the location of the property, and a description of the proposed, ongoing, or completed rehabilitation project. A plan of rehabilitation must provide the department with sufficient information to determine whether the rehabilitation qualifies for certification. The burden is on the ~~applicant~~ owner to supply sufficient information for the department to make a determination.

C. A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure or structures and its site and environment, as well as related demolition, new construction or rehabilitation work that may affect the historic qualities, integrity, site, landscape features, and environment of the property.

1. All elements of the rehabilitation project shall be consistent with the ~~standards~~ Standards for ~~rehabilitation~~ Rehabilitation, as set forth in 17VAC10-30-60. Portions of a project that are not in conformance with the standards may not be exempted, and the department may require remediation as a condition to receiving a certification of completed work. In general, an ~~applicant~~ owner undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, as long as it was done in good faith (without intent to circumvent the requirements set forth in this chapter or otherwise defraud the Commonwealth) and at least five years prior to submitting an application. Such prior work will not be considered done in good faith if the owner has received historic rehabilitation tax credits under Virginia's program in the past five years. Owners will not be held responsible for work or rehabilitation work that was undertaken by previous owners, as long as the previous owner is not a related party.

2. Conformance ~~to~~ with the standards will be determined on the basis of the application documentation and other available information ~~by evaluating~~, which may include physical inspection of the property by the department, evaluation of the property as it existed before the beginning of the rehabilitation project, and its condition at the completion of the rehabilitation.

3. If the legal boundaries of the property change after the owner submits the Part 1 of the Historic Preservation Certification Application, this information must be disclosed to the department in writing. The disclosure must describe the change in the property boundaries and the relationships, if any, between the owner of the property and the owners of adjacent properties. Situations involving a related party between the owner of the property for which rehabilitation tax credits are sought and an owner of adjacent property may require an expanded scope of review by the department.

D. The department, on receipt of the complete application describing the rehabilitation project, shall determine if the project is consistent with the ~~standards~~ Standards for ~~rehabilitation~~ Rehabilitation. If the project does not meet the standards, the department shall advise the ~~applicant~~ owner of that fact in writing. Where possible, the department will advise the project ~~applicant~~ owner of necessary revisions to meet the standards.

E. Once a proposed or ongoing ~~project~~ plan of rehabilitation has been ~~approved~~ certified, substantive changes in the work as described in the application shall be brought promptly to the attention of the department by written statement to ensure continued conformance to the ~~standards~~ Standards for Rehabilitation. The owner shall describe the change on the "Continuation/Amendment Sheet" of the Historic Preservation Certification Application and include relevant documentation for evaluation by the department. The department strongly recommends receiving certification of changes before commencing such work. Any work that does not conform to the plan of rehabilitation as certified by the department is at the owner's own risk, as changes that are not consistent with the standards may cause the entire project to be denied certification. After Part 3 of the application has been submitted, only essential corrections to the application may be made. The department may consider amendments to correct information within one year of the issuance of the certification of completed work, if justified.

F. An authorized representative of the department may inspect projects to determine if the work meets the ~~standards~~ Standards for ~~rehabilitation~~ Rehabilitation and is consistent with any information the owner supplied to the department, including whether the actual work completed is consistent with the costs reported. The department reserves the right to make inspections at any time up to three years after ~~completion~~ certification of ~~the~~ completed rehabilitation and to revoke a certification, after giving the ~~applicant~~ owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented in the application and supporting documentation. If the department discovers a material error of fact or misrepresentation in the information submitted for certification, the owner must address the issue within 60 calendar days of written notice by the department to avoid revocation of certification. The department may investigate any project where it reasonably

suspects fraud or misrepresentation, regardless of the time that may have passed since certification of completed rehabilitation. The tax consequences of a revocation of certification will be determined by the Department of Taxation. However, certification shall not be revoked for changes that are determined to have been made following good-faith completion of the project.

17VAC10-30-60. Standards for ~~rehabilitation~~ Rehabilitation.

A. The ~~standards~~ Standards for ~~rehabilitation~~ Rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified historic rehabilitation. The intent of the standards is to promote the long-term preservation of a property's significance through the preservation of historic materials and features. The standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a rehabilitation project shall be determined by the Department of Historic Resources to be consistent with the historic character of the structure or structures and, where applicable, the district in which it is located.

B. The ~~standards~~ Standards for ~~rehabilitation~~ Rehabilitation shall be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated architectural features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing architectural features must be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

C. The quality of materials, craftsmanship, and related new construction in a rehabilitation project should be commensurate with the quality of materials, craftsmanship, and design of the historic structure in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate rehabilitation measures include, but are not limited to: improper masonry repointing techniques~~;~~, improper exterior masonry cleaning methods~~;~~, improper introduction of insulation where damage to historic fabric would result~~;~~, and incompatible additions and new construction on historic properties. In almost all situations, these measures and treatments will result in denial of certification.

D. In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In these cases, the Department of Historic Resources will consider this extreme intervention as part of a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;

2. Significant architectural features and overall design are retained; and

3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

E. The qualities of a property and its environment ~~which~~ that qualify it as a certified historic structure are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; these determinations are not limited to information contained in the Virginia Landmarks Register nomination reports.

17VAC10-30-70. Appeals.

A. A project ~~applicant~~ owner may appeal any denial of certification. A request for an appeal shall be made in writing to the Director of the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221, within 60 days of receipt of the decision that is the subject of the appeal. It is not necessary for the ~~applicant~~ owner to present arguments for overturning a decision within this 60-day period. The ~~applicant~~ owner may request an opportunity to meet with the director, but all information that the ~~applicant~~ owner wishes the director to consider shall be in writing. The director shall consider the record of the decision in question, any further written submissions by the ~~applicant~~ owner, and other available information, and may consult with experts or others as appropriate. The director shall provide the ~~applicant~~ owner a written decision as promptly as circumstances permit. The appeal process is an administrative review of decisions made by the department; it is not an adjudicative proceeding.

B. In considering appeals, the director may take into account new information not previously available or submitted; alleged errors in professional judgment; or alleged prejudicial procedural errors. The director's decision may:

1. Reverse the appealed decision;

2. Affirm the appealed decision; or

3. Resubmit the matter to the department program staff for further consideration.

C. The decision of the director shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his administrative remedies with respect to the certifications or decisions described in this part until the director has issued a final administrative decision in response to this section.

17VAC10-30-80. Fees for processing rehabilitation certification requests.

A. Fees are charged for reviewing rehabilitation certification requests in accordance with the following schedule:

Rehabilitation Costs	Part 2 Review Fee	Part 3 Review Fee
Less than ~~$50,000~~ $100,000	~~Fee waived~~ $250	~~$100~~ $250
~~$50,000~~ $100,000 - ~~$99,999~~ $249,999	~~$250~~ $500	~~$250~~ $500
~~$100,000~~ $250,000 - $499,999	~~$400~~ $1,000	~~$400~~ $1,000
$500,000 - $999,999	~~$750~~ $2,000	~~$750~~ $2,000
$1,000,000 - $1,999,999	$4,000	$4,000
$2,000,000 - $3,499,999	$5,000	$5,000
$3,500,000 - $4,999,999	$7,000	$7,000
~~$1 million or more~~ $5,000,000 and above	~~$1,500~~ $8,000	~~$1,500~~ $8,000

B. The department generally completes reviews of certification requests within 30 days of receiving a complete, adequately documented application. Upon request, if the current workload at the department permits, the department ~~will~~ may review complete, fully documented applications within five business days. The director reserves the right to refuse requests for expedited review if the current workload at the department so warrants. Fees are charged for such expedited review in accordance with the following schedule:

Rehabilitation Costs	Expedited Review Fee
Less than ~~$50,000~~ $100,000	~~$100~~ $500
~~$50,000~~ $100,000 - ~~$99,999~~ $249,999	~~$250~~ $1,000
~~$100,000~~ $250,000 - $499,999	~~$400~~ $2,000
$500,000 - $999,999	~~$750~~ $4,000
$1,000,000 - $1,999,999	$8,000
$2,000,000 - $3,499,999	$10,000
$3,500,000 - $4,999,999	$14,000
~~$1 million or more~~ $5,000,000 and above	~~$1,500~~ $16,000

C. Payment of fees for review of Parts 2 and 3 shall be made to the Department of Historic Resources when the applications are submitted. Certification decisions will not be issued until the appropriate remittances are received. This includes all additional fees required if the project expenses exceed the cost estimate stated in the Part 2. Payment of fees for expedited review shall be submitted with the request for expedited review, and review shall not commence until such fee is paid. Fees are nonrefundable, except in cases where the request for expedited review is refused.

D. In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee. Phased projects incur separate Part 3 fees for each phase.

17VAC10-30-90. Forms.

~~Applications~~ To apply for certifications of buildings and rehabilitation projects ~~are made with the~~, an owner shall complete and submit the Historic Preservation Certification Application~~, prepared by~~ to the Department of Historic

Resources. The forms are available from the department and on the department's website.

17VAC10-30-100. Definition of rehabilitation project.

A. A certified historic structure shall be treated as having been materially rehabilitated only if the eligible rehabilitation expenses (as defined in 17VAC10-30-110) incurred in a 24-month period selected by the taxpayer ending with or within the completion year shall equal or exceed 50% of the assessed value of the building for local real estate tax purposes, determined for the year before the start of rehabilitation, unless the building is an owner-occupied building, in which case the eligible rehabilitation expenses shall amount to at least 25% of the assessed value of the building for local real estate tax purposes for the year before the start of rehabilitation.

B. In the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in a plan of rehabilitation submitted contemporaneously with the Description of Rehabilitation, subsection A of this section shall be applied by substituting "60-month period" for "24-month period." A rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. The department may review each phase as it is presented, but a phased project cannot be designated a certified rehabilitation until all of the phases are completed. The ~~applicant~~ owner may elect to claim the credit allowable for each completed phase of a phased project, upon receipt from the department of written ~~approval~~ certification of the work completed for each phase. Any such initial claims will be contingent upon final certification of the completed project.

C. In the case of properties containing more than one building for which tax credits are sought, the work at each building must constitute a material rehabilitation, according to subsection A of this section. The review fees will be charged according to the overall cost of the project. Buildings that are physically connected but that were not historically or functionally related, such as a duplex or rowhouse, shall qualify as separate certified historic structures, regardless of ownership, for the purposes of this program.

17VAC10-30-110. Eligible rehabilitation expenses.

A. Eligible rehabilitation expenses are those expenses incurred by a taxpayer in connection with a plan of rehabilitation on or after January 1, ~~1997~~ 2003, in the material rehabilitation of a certified historic structure and added to the property's capital account.

B. Once the material rehabilitation test is met, the eligible rehabilitation expenses upon which a credit can be claimed include:

1. Expenses incurred prior to the start of the 24-month measuring period as defined in 17VAC10-30-100 A, provided that the expenses were incurred in connection with the rehabilitation ~~process~~ plan that resulted in the material rehabilitation of the building;

2. Within the measuring period as defined in 17VAC10-30-100 A; and

3. After the end of the measuring period as defined in 17VAC10-30-100 A but prior to the completion of the project.

C. Amounts are properly chargeable to the capital account if they are properly includable in computing the basis of real property under U.S. Department of the Treasury, Internal Revenue Code, ~~Reg. §~~ 26 CFR 1.46-3(c). Amounts treated as an expense and deducted in the year paid or incurred or amounts that are otherwise not added to the basis of real property do not qualify. Amounts incurred for historic preservation consultant fees, architectural and engineering fees, certain site fees, and other construction-related costs that are added to the basis of real property satisfy this requirement.

D. Certain expenses are not eligible rehabilitation expenses. These expenses are:

1. The cost of acquiring a building, any interest in a building (including a leasehold interest) or land. Interest incurred on a construction loan the proceeds of which are used for eligible rehabilitation expenditures (and which is added to the basis of the property) is not treated as a cost of acquisition.

2. Landscaping.

3. Site work, including the construction or repair of parking lots, sidewalks, curbing, walls, fencing, pools, patios, etc., except that the cost of certain site work that is part of, and integral to, the building's systems, such as plumbing, mechanical, and electrical, may qualify.

4. Any expense attributable to an enlargement of a building.

a. A building is enlarged to the extent that the total volume of the building is increased. An increase in floor space resulting from interior remodeling is not considered an enlargement.

b. If expenditures only partially qualify as eligible rehabilitation expenditures because some of the expenditures are attributable to the enlargement of the building, the expenditures must be apportioned between the original portion of the building and the enlargement. The expenditures must be specifically allocated between the original portion of the building and the enlargement to the extent possible. If it is not possible to make a specific allocation of the expenditures, the expenditures must be allocated to each portion on a reasonable basis. The determination of a reasonable basis for an allocation depends on factors such as the type of improvement and how the improvement relates functionally to the building.

Example: A historic rehabilitation project includes a new rear wing. A new air-conditioning system and a new roof

are installed on the building. A reasonable basis for allocating the expenditures among the two portions generally would be the volume of the historic building (excluding the new wing), served by the air-conditioning system or the roof, relative to the volume of the new wing that is served by the air-conditioning system and the roof.

~~3.~~ 5. Any expense attributable to the rehabilitation of a certified historic structure, or a building located in a registered historic district~~, which~~ that is not a certified rehabilitation.

~~4.~~ 6. Any expense incurred before January 1, ~~1997~~ 2003.

~~5.~~ 7. Any expense not incurred by a taxpayer, including expenses incurred by a local government or any agency thereof, or by any agency, unit, or instrumentality of the Commonwealth.

~~6.~~ 8. Any rehabilitation expense financed, directly or indirectly, by an obligation of the Commonwealth of Virginia.

9. Any expense paid with insurance or indemnity payments received as a result of a property casualty loss of the property being rehabilitated.

10. Any expense related to personal property or nonessential equipment. Examples include, but are not limited to, removable cabinets, appliances, trade fixtures, and electronic and technology equipment that is not essential for the rehabilitation and basic function of the building, regardless of the specific use of the building.

11. All costs associated with syndication of the tax credits. This includes legal and other business fees related to syndication.

12. Deferred fees or unpaid costs for which there is no charge to a capital account with a corresponding recorded entry to a liability account and either proof of subsequent payment thereof or appropriate documentation evidencing the liability.

E. The taxpayer may take into account eligible rehabilitation expenses created in connection with the same plan of rehabilitation by any other entity with an interest in the building. Where eligible rehabilitation expenses are created with respect to a building by an entity other than the taxpayer and the taxpayer acquires the building or a portion of the building to which the expenses were allocable, the taxpayer acquiring such property will be treated as having incurred the eligible rehabilitation expenses actually created by the transferor, provided that no credit with respect to such qualified rehabilitation expenses is claimed by anyone other than the taxpayer acquiring the property and that the building has not been placed into service prior to the taxpayer's acquisition of the building.

F. A taxpayer who has incurred eligible rehabilitation expenses may elect to treat a tenant or tenants as having incurred these rehabilitation expenses, provided that the lease is for a term of at least five years. This election shall be made on the application for the certification of rehabilitation. For purposes of testing whether a rehabilitation is material, all eligible rehabilitation expenses will be counted. In the event the election is made to treat multiple tenants as having incurred rehabilitation expenses, the allocation of eligible rehabilitation expenses to these tenants shall be made in accordance with the relative square footage occupied by the tenants or the relative amounts of eligible rehabilitation expenses spent in connection with each tenant's space. Eligible rehabilitation expenses that are not readily allocable by specific space shall be allocated in a manner consistent with the allocation method chosen.

17VAC10-30-120. Qualification for credit.

Credits against tax shall be available for the material rehabilitation of a certified historic structure. Material rehabilitation means improvements or reconstruction consistent with the ~~standards~~ Standards for ~~rehabilitation~~ Rehabilitation, the cost of which amounts to at least 50% of the assessed value of the buildings for local real estate tax purposes for the year before the start of rehabilitation, unless the building is an owner-occupied building, in which case the cost shall amount to at least 25% of the assessed value of such building for local real estate tax purposes for the year before such rehabilitation expenses were incurred. An owner-occupied building is any building, at least 75% of which is used as a personal residence by the owner, or which is available for occupancy by the owner for at least 75% of the year. The assessed value of the building for local real estate tax purposes does not include any assessment for land. The determination of whether a rehabilitation has been material shall be made at the entity level, not at the partner or shareholder level.

~~Ex.~~ Example 1. Certified historic structure has a ~~1996~~ 2012 tax assessment of $20,000 for the land, $80,000 for the building~~;~~ and a ~~1997~~ 2013 assessment of $20,000 for the land, $70,000 for the building. Taxpayer submits a plan of rehabilitation on December 1, ~~1997~~ 2013. Taxpayer applies for a building permit for work to be done in accordance with the plan of rehabilitation on December 15, ~~1997~~ 2013. Taxpayer incurs eligible rehabilitation expenses in the amount of $37,500 pursuant to the plan of rehabilitation. Rehabilitation is completed in ~~1999~~ 2015. Taxpayer is not entitled to a tax credit because taxpayer's eligible rehabilitation expenses ($37,500) do not exceed 50% of the assessed value of the building in the year prior to the start of rehabilitation ($40,000).

~~Ex.~~ Example 2. Same facts as above, except taxpayer applies for the building permit on January 2, ~~1998~~ 2014. Eligible rehabilitation expenses ($37,500) exceed 50% of the assessed value of the building in the year prior to the start of rehabilitation ($35,000). Therefore, taxpayer is entitled to a credit of 20% (for completion in ~~1999)~~ 2015) of $37,500.

17VAC10-30-130. Amount and timing of credit.

A. The amount of the credit shall be determined by multiplying the total amount of eligible rehabilitation expenses incurred in connection with the plan of rehabilitation by 25%. Eligible rehabilitation expenses may include expenses in connection with the rehabilitation that were incurred prior to the start of rehabilitation. Further, eligible rehabilitation expenses may include expenses incurred prior to completion of a formal plan of rehabilitation provided the expenses were incurred in connection with the rehabilitation that was completed.

B. Complete, adequately documented Historic Preservation Certification Application forms must be received by the department within one year after the ~~final expense is incurred or the final certificate of occupancy (if appropriate) is issued~~ completion date. Properties that do not meet the criteria for individual listing on the Virginia Landmarks Register must be located in registered historic districts by such date. Taxpayers are cautioned, however, that if Parts 1 and 2 of the Historic Preservation Certification Application forms are not submitted prior to beginning work on the rehabilitation, they proceed with the project at the risk that the building or the rehabilitation project will not be certified.

17VAC10-30-140. Entitlement to credit.

A. Effective for taxable years beginning on and after January 1, [~~1997~~ 2003], any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against tax in the manner and amount set forth in these regulations. Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated among partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree.

The members, partners or shareholders at the end of the taxable year in which there is an entitlement to credit shall be allocated the state rehabilitation tax credits for which a project is certified.

B. The Department of Historic Resources shall certify the amount of eligible rehabilitation expenses. The certification shall consist of a letter signed by an authorized representative of the department confirming that the rehabilitated property is a certified historic structure and that the rehabilitation is a certified historic rehabilitation, and shall specify the amount of eligible rehabilitation expenses, based on the Request for Certification of Completed Work form. The department's certification shall make reference to any partnership, S corporation, or limited liability company allocation document, as defined in subsection A of this section. A person with an interest in the property who materially rehabilitates a certified historic structure may apply for a certificate of material rehabilitation. Persons with an interest in the property include those individuals or entities that have a possessory interest in the property. The application for ~~issuance~~ certification of a ~~certificate~~ project shall set forth the name of the individual or entity ~~that will utilize~~ entitled to the credit on its tax return. The taxpayer shall attach the ~~certificate~~ letter of certification to the Virginia tax return on which the credit is claimed.

C. If the amount of the credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the income taxes of such taxpayer for the next ~~ten~~ 10 taxable years or until the full credit is used, whichever occurs first. For purposes of ~~passthrough~~ pass-through entities (e.g., general and limited partnerships, limited liability companies, S corporations) this paragraph shall be applied to the partners, members or shareholders, as applicable.

17VAC10-30-150. ~~Transition rules for projects~~ Projects begun before ~~1997~~ 2003.

~~A.~~ Rehabilitation expenses incurred before January 1, ~~1997~~ 2003, do not qualify for a rehabilitation tax credit and will not be considered part of the rehabilitation project for which owner seeks tax credits.

~~B. Applicants whose rehabilitation projects commenced before 1997, but were not completed until after January 1, 1997, may apply for certification of their rehabilitation work, in accordance with the provisions of 17VAC10-30-20, 17VAC10-30-30, and 17VAC10-30-50. In these cases, the tax credit is calculated as the appropriate percentage of expenses incurred on or after January 1, 1997.~~

~~C. For projects begun before January 1, 1997, the material rehabilitation test shall be determined by the entire project, rather than by those parts of the work completed on or after January 1, 1997.~~

17VAC10-30-160. Coordination with the federal certified historic rehabilitation program.

A. Certifications of properties and rehabilitation projects by the National Park Service, U.S. Department of the Interior, under ~~Federal Law~~ 36 CFR Part 67, are not equivalent to certification of properties and rehabilitation projects by the Virginia Department of Historic Resources under § 58.1-339.2 of the Code of Virginia, except as provided in subsection B of this section. Taxpayers are cautioned that deadlines and requirements for certifications under these state regulations may differ from deadlines and requirements for certifications under the federal program.

B. Certifications of historic significance of properties (Part 1, Historic Preservation Certification Application) by the National Park Service, U.S. Department of the Interior, dated after January 1, 1995, shall be accepted as equivalent of certification of historic significance by the Virginia

Department of Historic Resources under the provisions of 17VAC10-30-20.

C. Approval under one program does not necessarily mean the project will be approved by the other.

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 (17VAC10-30)

~~State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 1 - Evaluation of Significance, DHR Form TC-1 (rev. 8/02).~~

~~State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 2 - Description of Rehabilitation, DHR Form TC-2 (rev. 8/02).~~

~~State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 3 - Request for Certification of Completed Work, DHR Form TC-3 (rev. 8/02).~~

~~State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Billing Statement, DHR Form TC-4 (rev. 10/03).~~

~~Disclosure of Ownership - State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application, DHR Form TC-5 (rev. 8/02).~~

[~~State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 1 - Evaluation of Significance, DHR Form TC-1 (rev. 8/13)~~

~~State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 2 - Description of Rehabilitation, DHR Form TC-2 (rev. 8/13)~~

~~State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 3 - Request for Certification of Completed Work, DHR Form TC-3 (rev. 8/13)~~

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 1 - Evaluation of Significance, DHR Form TC-1 (rev. 10/2015)

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 2 - Description of Rehabilitation, DHR Form TC-2 (rev. 10/2015)

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 3 - Request for Certification of Completed Work, DHR Form TC-3 (rev. 10/2015)]

Continuation/Amendment Sheet - Historic Preservation Certification Application, DHR Form TC-4 (rev. 1/2015)

State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Billing Statement, DHR Form TC-5 (rev. 1/2015)

Disclosure of Ownership - State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application, DHR Form TC-6 (rev. 1/2015)

DOCUMENTS INCORPORATED BY REFERENCE (17VAC10-30)

[~~Rehabilitation Tax Credit Program Certification Requirements, Virginia Department of Historic Resources, January 2015~~

Rehabilitation Tax Credit Program Certification Requirements, October 2015, Department of Historic Resources]

VA.R. Doc. No. R13-3494; Filed December 18, 2015, 12:39 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

Titles of Regulations: **18VAC48-40. Time-Share Regulations (repealing 18VAC48-40-10 through 18VAC48-40-110, 18VAC48-40-120, 18VAC48-40-130, 18VAC48-40-140, 18VAC48-40-150, 18VAC48-40-160).**

18VAC48-45. Time-Share Regulations (adding 18VAC48-45-10 through 18VAC48-45-770).

Statutory Authority: §§ 54.1-2349 and 55-396 of the Code of Virginia.

Effective Date: March 1, 2016.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

As a result of periodic review and legislative changes, this regulatory action repeals current regulations and promulgates replacement regulations. The replacement regulations (i) address the board's authority, including the discipline of regulated entities; (ii) add provisions pertaining to time-share project registration, alternative purchase registration, exchange program registration, and time-share reseller registration; (iii) establish standards of conduct; (iv) require entities that resell time-shares for the time-share owners more than 12 times a year to register with the board and pay registration and renewal fees; and (v) provide a list of exemptions from the time-share reseller registration requirement.

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 45
TIME-SHARE REGULATIONS

Part 1
General

[~~18VAC48-45-10. Purpose.~~ (Reserved).]

[~~This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by the Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia) as the act pertains to the registration of time-share programs, time-share projects, alternative purchases, exchange companies, and time-share resellers.~~]

18VAC48-45-20. Definitions.

A. Section 55-362 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Affiliate"
"Alternative purchase"
"Association"
"Board"
"Board of directors"
"Common elements"
"Contact information"
"Contract" or "purchase contract"
"Conversion time-share project"
"Default"
"Developer"
"Developer control period"
"Development right"
"Dispose" or "disposition"
"Exchange company"
"Exchange program"
"Guest"
"Incidental benefit"
"Lead dealer"
"Managing agent"
"Managing entity"
"Material change"
"Offering" or "offer"
"Person"
"Project"
"Public offering statement"
"Purchaser"
"Resale purchase contract"
"Resale time-share"
"Resale service"
"Resale transfer contract"
"Reseller"
"Reverter deed"
"Situs"
"Time-share"
"Time-share estate"
"Time-share expense"
"Time-share instrument"
"Time-share owner" or "owner"
"Time-share program" or "program"
"Time-share project"
"Time-share unit" or "unit"
"Time-share use"
"Transfer"

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

"Alternative disclosure statement" means a disclosure statement for an out-of-state time-share program or time-share project that is properly registered in the situs.

"Annual report" means a completed, board-prescribed form and required documentation submitted in compliance with § 55-394.1 of the Code of Virginia.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation in compliance with the Virginia Real Estate Time-Share Act and this chapter.

"Department" means the Department of Professional and Occupational Regulation.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia.

"Full and accurate disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the time-share in order to protect the interests of purchasers.

"Registration file" means the application for registration, supporting materials, annual reports, and amendments that constitute all information submitted and reviewed pertaining to a particular time-share program, time-share project, alternative purchase, exchange company, or time-share reseller registration. A document that has not been accepted for filing by the board is not part of the registration file.

"Virginia Real Estate Time-Share Act" means Chapter 21 (§ 55-360 et seq.) of Title 55 of the Code of Virginia.

18VAC48-45-30. Explanation of terms.

Each reference in this chapter to a "developer," "purchaser," and "time-share owner" or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to natural persons and organizations. The term "developer" shall refer to any successors to the persons referred to in § 55-362 of the Code of Virginia who come to stand in the same relation to the time-share as their predecessors in that they assumed rights reserved for the benefit of a developer that (i) offers to dispose of its interest in a time-share not previously disposed of or (ii) applies for registration of the time-share program.

18VAC48-45-40. Time-share projects located outside of Virginia.

A. In any case involving a time-share project located outside of Virginia in which the laws or practices of the jurisdiction in which such time-share project is located prevent

compliance with a provision of this chapter, the board shall prescribe by order a substitute provision to be applicable in such case that is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words "time-share instrument" and "public offering statement," when used in this chapter with reference to a time-share located outside of Virginia, mean documents, portions of documents, or combinations thereof, by whatever name denominated, that have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The word "recording" or "recordation" when used with reference to time-share instruments of a time-share located outside of Virginia means a procedure that, in the jurisdiction in which such time-share is located, causes the time-share instruments to become legally effective.

D. This chapter shall apply to a contract for the disposition of a time-share located outside of Virginia only to the extent permissible under the provisions of subsection C of § 55-361.1 of the Code of Virginia.

E. The time-share shall be properly registered in the state or other jurisdiction where the project is located.

Part II
General Application Requirements

18VAC48-45-50. Application procedures.

A developer seeking registration of a time-share project or an alternative purchase, an exchange company seeking registration of an exchange program, or a reseller seeking registration in order to offer or provide resale services, all in accordance with the Virginia Real Estate Time-Share Act, shall submit an application on the appropriate form provided by the board, along with the appropriate fee specified in 18VAC48-45-70.

By submitting the application to the board, the applicant certifies that the applicant has read and understands the applicable statutes and this chapter.

The receipt of an application and the deposit of fees by the board do not indicate approval or acceptance of the application by the board.

The board may make further inquiries and investigations to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained [~~herein~~ in this chapter] and on the application. Applications will not be considered complete until all required documents are received by the board.

Applications that are not complete within 12 months after receipt of the application in the board's office will be purged, and a new application and fee must be submitted in order to be reconsidered for registration.

18VAC48-45-60. Review of application for registration, generally.

A. Upon the review of the application for registration, if the requirements of this chapter have not been met, the board shall notify the applicant.

B. The board may refuse initial registration due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant.

C. At such time as the board affirmatively determines that the requirements of this chapter have been met, the board shall issue the applicable registration.

D. Notwithstanding the provisions of 18VAC48-45-130 for a time-share project registration, applicants who do not meet the requirements of this chapter may be approved following consideration by the board in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC48-45-70. Fees.

A. All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is timely. Checks or money orders shall be made payable to the Treasurer of Virginia.

B. Fees are as follows:

Time-share project registration application	$1,500
Time-share project phase [amendment] filing	$250
Time-share project registration annual report	$500
Alternative purchase registration application	$100
Alternative purchase registration annual report	$100
Exchange program registration application	$1,000
Exchange program registration annual report	$250
Time-share reseller registration application	$250
Time-share reseller registration renewal	$250
Time-share reseller registration reinstatement (includes a $100 reinstatement fee in addition to the $250 renewal fee)	$350

Part III
Marketing and Advertising

18VAC48-45-80. Time-share marketing activities.

A. Time-share marketing activities shall include every contact by or on behalf of the developer for the purpose of

promoting disposition of a time-share or alternative purchase. Such contacts may be personal, by telephone, by mail, by electronic means including social media, or by advertisement. A promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity may be oral, written, electronic, or graphic.

B. No time-share marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits, or encourages a prospective purchaser to (i) execute a contract of sale of the time-share or alternative purchase or (ii) perform some other act that would create or purport to create a legal or equitable interest in the time-share until the board has issued an order of registration.

18VAC48-45-90. Offering of gifts or prizes.

A. Any offering that includes a gift or prize shall include the disclosures contained in § 55-374.1 of the Code of Virginia. Such disclosures shall be made with the same prominence as the offer.

B. The board may at any time require a developer to alter or amend any offering that includes a gift or prize in order to ensure compliance with this section.

Part IV
Application for Time-Share Project Registration

18VAC48-45-100. Registration of time-share project and program.

In accordance with § 55-390 of the Code of Virginia, a developer offering or disposing of an interest in a time-share program must register the time-share project and its program with the board. For the purposes of this chapter as it relates to registration, the registration of a time-share project shall include the simultaneous registration of the time-share program.

18VAC48-45-110. Prerequisites for registration of a time-share project.

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55-391.1 of the Code of Virginia.

1. The developer shall own or have the right to acquire an estate in the land constituting or to constitute the time-share project that is of at least as great a degree and duration as the estate to be conveyed in the time-shares.

2. The time-share instrument must be adequate to bring a time-share project into existence upon recordation. This subdivision does not apply to a time-share instrument that may be recorded after the time-share project has been created.

3. The time-share instrument must include a statement detailing that the developer reserves or does not reserve the right to add or delete any alternative purchase.

4. The current and planned time-share advertising activities of the developer shall comply with § 18.2-216 of the Code of Virginia and this chapter.

5. If the developer is a firm, it shall be organized as a business entity under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

18VAC48-45-120. Review of application for registration of a time-share project.

A. Upon receipt of an application for registration of a time-share project, the board shall issue the notice of filing required by subsection A of § 55-393.1 of the Code of Virginia.

B. Upon the review of the application for registration, if the requirements of § 55-391.1 of the Code of Virginia and this chapter have not been met, the board shall notify the applicant as required by subsection C of § 55-393.1 of the Code of Virginia.

C. If the requirements for registration are not met within the application review period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting the registration as required by subsection C of § 55-393.1 of the Code of Virginia. The order rejecting the registration shall become effective 20 days after issuance.

D. An applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia at any time between receipt of a notification pursuant to subsection B of this section and the effective date of the order of rejection entered pursuant to subsection C of this section. A request for such proceeding shall be deemed a consent to delay within the meaning of subsection A of § 55-393.1 of the Code of Virginia.

E. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting the registration. If the board determines after review of the corrections that the requirements for registration have not been met, the board may proceed with an informal conference in accordance with § 2.2-4019 of the Code of Virginia in order to allow reconsideration of whether the requirements for registration are met. If the board does not opt to proceed with an informal conference, the applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia in order to reconsider whether the requirements for registration are met. If the board does not proceed with an informal conference and no request for an informal conference is received from the applicant, an amended order of rejection stating the factual basis for the rejection shall be issued. A new 20-day period for the order of rejection to become effective shall commence.

F. At such time as the board affirmatively determines that the requirements of § 55-391.1 of the Code of Virginia have

been met, the board shall enter an order registering the time-share and shall designate the form, content, and effective date of the public offering statement.

18VAC48-45-130. Minimum application requirements for registration of a time-share project.

A. The documents and information contained in §§ 55-367, 55-368, 55-369, 55-371, 55-374, and 55-391.1 of the Code of Virginia, as applicable, shall be included in the application for registration of a time-share project.

B. The application for registration of a time-share project shall include the fee specified in 18VAC48-45-70.

C. The following documents shall be included in the application for registration of a time-share project as exhibits. All exhibits shall be labeled as indicated and submitted in a format acceptable to the board.

1. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission, or any other entity formation documents, together with any trade or fictitious name certificate.

2. Exhibit B: A certificate of recordation or other acceptable documents from the city or county where the time-share is located.

3. Exhibit C: A copy of the title opinion, the title policy, or a statement of the condition of the title to the time-share project including encumbrances as of a specified date within 30 days of the date of application by a title company or licensed attorney who is not a salaried employee, officer, or director of the developer or owner, in accordance with subdivision A 5 of § 55-391.1 of the Code of Virginia. If the developer is not the record owner of the land, a copy of any contract the developer has executed to purchase the land, any option the developer holds for the purchase of the land, or any lease under which the developer holds the land.

4. Exhibit D: Proof that the applicant or developer owns or has the right to acquire an estate in the land constituting or to constitute the time-share project, which is of at least as great a degree and duration as the estate to be conveyed in the time-share.

5. Exhibit E: A statement of the zoning, subdivision, or land use obligations or proffers and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status, any existing tax, and existing or proposed special taxes or assessments that affect the time-share.

6. Exhibit F: A copy of the time-share instrument, including all applicable amendments and exhibits, that will be delivered to a purchaser to evidence the purchaser's interest in the time-share and of the contracts and other agreements that a purchaser will be required to agree to or sign.

7. Exhibit G: A narrative description of the promotional plan for the disposition of the time-shares.

8. Exhibit H: A copy of the proposed public offering statement that complies with § 55-374 of the Code of Virginia and this chapter. Pursuant to subsection G of § 55-374, a similar disclosure statement required by other situs laws governing time-sharing may be submitted for a time-share located outside of the Commonwealth.

9. Exhibit I: A copy of the buyer's acknowledgment. Pursuant to § 55-376.5 of the Code of Virginia, the purchaser shall be given this document prior to signing a purchase contract, and the document shall contain the information required by subsection B of § 55-376.5.

10. Exhibit J: Copies of bonds or letters of credit issued by a financial institution, if any, required by subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia, as applicable.

11. Exhibit K: A copy of any management agreements [, ~~employment contracts or~~ and] other contracts or agreements affecting the [overall] use, maintenance, management, or access of all or any part of the time-share project.

12. Exhibit L: A list with the names of every officer [~~of the developer or persons occupying a similar status within or performing similar functions for the developer,~~ manager, owner, or principal, as applicable to the type of firm under which the developer is organized to do business, of the developer or persons occupying a similar status within or performing similar functions for the developer]. The list must include each individual's [residential] address [or other address] valid for receipt of service, principal occupation for the past five years, and title.

13. Exhibit M: A statement whether any of the individuals or entities named in Exhibit L are or have been involved as defendants in any indictment, conviction, judgment, decree, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity.

14. Exhibit N: A statement whether, during the preceding five years, any of the individuals or entities named in Exhibit L have been adjudicated bankrupt or have undergone any proceeding for the relief of debtors.

15. Exhibit O: If the developer has reserved the right to add to or delete from the time-share program any incidental benefit or alternative purchase, a description of the incidental benefit or alternative purchase shall be provided pursuant to subdivision A 13 of § 55-391.1 of the Code of Virginia.

16. Exhibit P: Conversion time-share projects must attach a copy of the notice required by subsection D of § 55-374 of the Code of Virginia and a certified statement that such notice shall be mailed or delivered to each of the tenants in the building or buildings for which the registration is sought at the time of the registration of the conversion project.

Part V
Public Offering Statement

18VAC48-45-140. Public offering statement requirements, generally.

In addition to the provisions of § 55-374 of the Code of Virginia, the following will be considered, as applicable, during review of the public offering statement:

1. The public offering statement shall provide full and accurate disclosure in accordance with 18VAC48-45-150.

2. The public offering statement shall pertain to the time-share project in which the time-shares being offered are located.

3. The public offering statement shall be clear, organized, and legible.

4. Except for brief excerpts, the public offering statement may refer to, but should not incorporate verbatim, portions of the time-share instruments, the Virginia Real Estate Time-Share Act, or this chapter. This does not preclude compliance with 18VAC48-45-170.

18VAC48-45-150. Full and accurate disclosure.

A. The provisions of § 55-374 of the Code of Virginia and this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement. In addition, the following will be considered, as applicable, during review to assure full and accurate disclosure:

1. The information shall be presented in a manner that is clear and understandable to a reasonably informed consumer, while maintaining consistency with the requirements of this chapter and the Virginia Real Estate Time-Share Act.

2. No information shall be incorporated by reference to an outside source that is not reasonably available to a prospective purchaser.

3. If required information is not known or not reasonably available, such fact shall be stated and explained in the public offering statement.

B. The board has the sole discretion to require additional information or amendment of existing information as it finds necessary to ensure full and accurate disclosure.

18VAC48-45-160. Contents of public offering statement.

A. A cover, if used, must be blank or bear identification information only.

B. The developer may include as part of the public offering statement a receipt page printed in such a way that the developer may obtain verification that a prospective purchaser has received the public offering statement. The receipt page shall include the effective date of the public offering statement as well as a place for the date of delivery and signature lines for the prospective purchaser. The authorized receipt page in proper form, duly executed, shall be evidence that the public offering statement was delivered.

C. The first page of the public offering statement shall be substantially as follows.

PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF TIME-SHARE PROJECT: _____
_____

LOCATION OF TIME-SHARE PROJECT: _____
_____

NAME OF DEVELOPER: _____
_____

ADDRESS OF DEVELOPER: _____
_____

EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: _____
_____

_____

REVISED: _____

THE PURCHASER OF A TIME-SHARE MAY CANCEL THE CONTRACT UNTIL MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE EXECUTION OF SUCH CONTRACT. THE PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S OWN PROTECTION.

Purchasing a time-share carries with it certain rights, responsibilities, and benefits, including certain financial obligations, rights, and restrictions concerning the use and maintenance of units and common elements. The purchaser will be bound by the provisions of the time-share instruments and should review the Public Offering Statement, the time-share instruments, and other exhibits carefully prior to purchase.

This Public Offering Statement presents information regarding time-share(s) being offered for sale by the developer. The Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia) requires that a Public Offering Statement be given to every Purchaser in order to provide full and accurate disclosure of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered. The

Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the developer to the Virginia Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement but does not guarantee the accuracy or completeness of the Public Offering Statement. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the material shall control.

If the Purchaser elects to cancel the contract within the seven-day cancellation period, all payments made in connection with the purchase contract shall be refunded to the Purchaser within 45 days. If the Purchaser elects to cancel the contract, the Purchaser shall do so either by (i) hand-delivering the notice to the developer at its principal office or at the project or (ii) mailing the notice by certified United States mail, return receipt requested, to the developer or its agent designated in the contract.

Allegations of violation of any law or regulation contained in the Virginia Real Estate Time-Share Act or the Time-Share Regulations (18VAC48-45) should be reported to the Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233.

D. A summary of important considerations shall immediately follow the first page for the purpose of reinforcing the disclosure of significant information. The summary shall be titled as such and shall be introduced by the following statement: "The following are important matters to be considered in acquiring a time-share. They are highlights only. The Public Offering Statement should be examined in its entirety to obtain detailed information." Appropriate modifications shall be made to reflect facts and circumstances that may vary. The summary shall consist of, but not be limited to, the following, as applicable:

1. A brief description of the time-share project and the time-share program.

2. A statement regarding all incidental benefits or alternative purchases that may be offered by the developer.

3. A brief description of all amenities located within or outside of the time-share project [and] available to [~~purchasers~~ time-share owners by virtue of ownership in the time-share project. If such amenities are not common elements of the time-share project, identify who owns the amenities and whether time-share owners are required to pay to access and use].

4. A statement describing any exchange program that may be offered to the purchaser.

5. A statement [~~regarding the payment of principal and interest due under any deferred purchase agreement for the purchase of the time-share, maintenance fees or assessments, special assessments, user fees, insurance premiums, and real estate taxes. A time-share owner cannot reduce the amount of any owner obligation for any reason, including the refraining from using the time-share, a developer amenity, or any common element~~ describing (i) the purchaser's responsibility to make principal and interest payment in connection with the purchase of the time-share as well as to pay maintenance fees or assessments, special assessments, user fees, insurance premiums, and real estate taxes and (ii) that a time-share owner cannot reduce the amount of any owner obligation for any reason].

6. A statement regarding the consequences for failure to pay maintenance fees or any special assessment when due. The statement may reference the enforcement mechanisms available to the developer, and if applicable the time-share association, by describing (i) any declaration of an owner being an "Owner Not in Good Standing"; (ii) any civil action taken for the collection of a debt; (iii) [~~,~~ means for] pursuing foreclosure or obtaining a lien against the time-share unit; and (iv) denial of access to the time-share project and participation in the time-share program.

7. A statement indicating whether the developer or managing agent has indictments, convictions, judgments, decrees, or order of any court or administrative agency for matters related to fraud or consumer protection violations that may be required to be disclosed by subdivisions A 1 c and A 1 d of § 55-374 of the Code of Virginia.

8. A statement indicating the period of time the developer will retain control of the association for time-share estate projects.

9. A statement disclosing any management agreement with a managing agent to perform certain duties for the time-share project.

10. A statement indicating whether the developer may expand the time-share project.

11. A statement indicating whether the right of the time-share owner to resell or transfer the time-share is subject to restrictions.

12. A statement indicating the time-share units are restricted to lodging only.

13. A statement indicating that the time-share owner may not alter the interior or exterior of the time-share unit.

14. A statement regarding the obligation of the developer or association to obtain certain insurance benefiting the time-share owner.

15. A statement regarding a time-share estate and time-share owner's obligation to pay real estate taxes.

16. A statement regarding whether or not the developer reserves the right to add or delete any alternative purchase.

E. The content after the summary of important considerations shall include the narrative sections in

18VAC48-45-170 through 18VAC48-45-310. Supplementary sections may be included as necessary.

F. Clear and legible copies of the following documents shall be [~~attached as exhibits~~ included as either supplements or exhibits] to the public offering statement:

1. Project time-share instrument;

2. Association articles of incorporation;

3. Bylaws;

4. Association annual report or projected budget for time-share estate programs;

5. Rules and regulations of the time-share owners' association, if available;

6. Any management contract, if applicable;

7. Exchange company disclosure document and narrative statement required pursuant to subsection B of § 55-374 of the Code of Virginia, if applicable; and

8. Other documents obligating the association or time-share owner to perform duties or obligations or pay charges or fees, if applicable.

[~~G. The developer may include the public offering statement required for any alternative purchase pursuant to subsection H of § 55-374 of the Code of Virginia as offered by the developer in conjunction with the time share being registered.~~

~~H.~~ G.] Other information and documentation may be included as necessary to ensure full and accurate disclosure. The board may also require additional information as necessary to ensure full and accurate disclosure.

18VAC48-45-170. Narrative sections; time-share concept.

The public offering statement shall contain a section captioned "The Time-Share Concept." The section shall consist of a brief discussion of the form of time-share ownership being offered.

18VAC48-45-180. Narrative sections; creation of time-share project.

The public offering statement shall contain a section captioned "Creation of the Time-Share Project." The section shall briefly explain the manner in which the time-share project was or will be created, the locality wherein the time-share instrument will be or has been recorded, and the procedure for its amendment.

18VAC48-45-190. Narrative sections; description of time-share project.

A. The public offering statement shall contain a section captioned "Description of the Time-Share Project." The section shall provide a general description of the time-share project registered with the board and the units and common elements promised available to purchasers. This section shall also provide the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

B. The section shall state whether the developer has reserved the right to add and delete from the time-share program a time-share project or any incidental benefit or alternative purchase.

C. The section shall refer the purchaser to the reverter deed for an explanation if the developer utilized the possibility of a reverter.

D. The section shall indicate all provisions that have been made for public utilities in the time-share project, including but not limited to water, electricity, telephone, and sewerage facilities.

18VAC48-45-200. Narrative sections; individual time-shares.

A. The public offering statement shall contain a section captioned "Individual Time-Shares." The section shall indicate (i) the form of time-share ownership being offered; (ii) the types, duration, and number of units and time-shares in the project registered with the board; (iii) identification of units that are subject to the time-share program; and (iv) the estimated number of units that may become subject to the time-share program.

B. This section shall explain the extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being offered for sale. The section shall contain a statement of the developer's obligation to complete any promised time-share unit or common element being offered for sale comprising the time-share project that have not begun or begun but not yet completed.

C. The section shall explain the extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

18VAC48-45-210. Narrative sections; developer.

The public offering statement shall contain a section captioned "The Developer." The section shall disclose the following information concerning the developer:

1. The name and principal address of the developer.

2. The name, principal occupation, and address of every director, partner, limited liability company manager, or trustee of the developer.

3. The name and address of each person owning or controlling an interest of at least 20% in the time-share project.

4. The particulars of any indictment, conviction, judgment, decree, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity.

5. The nature of each unsatisfied judgment, if any, against the developer or the managing entity; the status of each pending suit involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof, is a defending party; and the status of each pending suit, if any, of significance to any time-share project registered with the board.

6. The name and address of the developer's agent for service of any notice permitted by this chapter.

7. The section shall describe the type of legal entity of the developer and explain if other entities have any obligation to satisfy the financial obligations of the developer.

8. For a time-share use program, a statement as to whether a developer's net worth is more than or less than $250,000. If the developer's net worth is less than $250,000, a current audited balance sheet shall be provided with the public offering statement. If the developer's net worth exceeds $250,000, a statement by the developer that its equity in the time-share program exceeds $250,000.

18VAC48-45-220. Narrative sections; terms of offering.

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a time-share and present information regarding the settlement of purchase contracts as provided in subsections B through H of this section.

B. The section shall indicate any initial or special fees due from the purchaser at settlement including a description of the purpose of such fees.

C. The section shall set forth a general description of any financing offered by or available through the developer to purchasers.

D. The section shall describe (i) services that the developer provides or [~~expense~~ expenses] it pays and that it expects may become at any subsequent time a time-share expense of the owners and (ii) the projected time-share expense liability attributable to each of those services or expenses for each time-share.

E. The section shall discuss all penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase contract.

F. The section shall discuss the process for cancellation of a purchase contract by a purchaser in accordance with § 55-376 of the Code of Virginia. The section shall include a statement that the purchaser has a nonwaivable right of cancellation and refer such purchaser to that portion of the contract in which the right of cancellation may be found.

G. The section shall describe the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

H. The section shall set forth all restrictions in the purchase contract that limit the time-share owner's right to bring legal action against the developer or the association. The section shall set forth the paragraph or section and page number of the purchase contract where such provision is located. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

18VAC48-45-230. Narrative sections; encumbrances.

The public offering statement shall contain a section captioned "Encumbrances" that shall describe all liens, defects, or encumbrances affecting the time-share project and in particular the time-share offered to the purchaser.

18VAC48-45-240. Narrative sections; exchange program.

If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall contain a section captioned "Exchange Program" that shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory; and

2. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer and whether there is a fee associated with membership or participation in the exchange program.

18VAC48-45-250. Narrative sections; financial matters.

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a time-share.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair, and replacement of various portions of the time-share as follows: (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55-369 of the Code of Virginia; and (iii) all other costs that may be borne directly by individual time-share owners.

C. A budget shall show projected common expenses in each of the categories in subsection B of this section for the first year of the time-share's operation or, if different, the latest year for which a budget is available. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention to such exhibit. The section shall describe the manner in which the projected budget is established. If the time-share is phased, the budget shall project future years until all phases are projected to be developed and all common elements that must be built have been completed. The budget shall include an initial working capital budget showing sources and uses of initial working capital and a reserve table showing amounts to be collected to fund those reserves. The budget shall show regular individual assessments by unit type. The budget shall note that the figures are not guaranteed and may vary.

D. The section shall describe the manner in which (i) time-share expenses; (ii) time-share estate occupancy expenses as

defined in § 55-369 of the Code of Virginia; and (iii) all other costs that may be borne directly by individual time-share owners are apportioned among and assessed to the time-share units. The section shall include the substance of the following statement, if applicable: "A time-share owner cannot obtain a reduction of the (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55-369 of the Code of Virginia; and (iii) any other costs that may be borne directly by individual time-share owners assessed against the unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures, if any. If there are no reserves, the section shall so state.

F. The section shall discuss [~~any~~] (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55-369 of the Code of Virginia; [~~and~~] (iii) all other costs that may be borne directly by individual time-share owners [~~; actually planned to be specially assessed~~; and (iv) any right the developer or association has to institute special assessments].

G. The section shall indicate any fee, rental, or other charge to be payable by unit owners other than through assessments and maintenance fees to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the time-share project.

H. The section shall discuss the effect of failure of a time-share owner to pay the assessments and maintenance fees levied against the time-share unit. Such discussion shall indicate provisions for charges or other remedies that may be imposed to be applied in the case of unpaid and past due assessments and for acceleration of unpaid assessments.

[18VAC48-45-255. Narrative sections; governmental reviews.

The public offering statement shall contain a section captioned "Governmental Reviews." The section shall discuss governmental approvals required for the development of the time-share project. In addition, the section shall discuss approval of the zoning application and site plan and issuance of building permits by appropriate governmental authorities. The section shall state the current zoning classification for the time-share project property. The section shall also include a statement regarding zoning, subdivision, or land use obligations or proffers that would be imposed on the time-share owner or the association, but need not disclose zoning, subdivision, or land use obligations or proffers that do not impose any obligation on the association.]

18VAC48-45-260. Narrative sections; restrictions on transfer.

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain limitations on leasing or other restraints on free alienability created by the time-share instruments or the rules and regulations of the time-share owners' association that affect the time-share owners' right to resell, lease or otherwise transfer an interest in the time-share.

18VAC48-45-270. Narrative sections; time-share owners' association.

A. For time-share estate projects the public offering statement shall contain a section captioned "Time-Share Owners' Association." The section shall discuss the arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units and shall include the information required by subdivisions 1 through 15 of this subsection. The section shall describe or discuss the following:

1. The creation of the association.

2. The payment of costs and expenses of operating the time-share estate program and owning and maintaining the time-share units.

3. Employment and termination of employment of the managing agent for the time-share estate project.

4. Termination of leases and contracts for goods and services for the time-share estate project that were entered into during the developer control period.

5. Preparation and dissemination of the annual report required by § 55-370.1 of the Code of Virginia to the time-share estate owners.

6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners.

7. Collection of regular assessments, fees or dues, and special assessments from time-share estate owners to defray all time-share expenses.

8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of the time-share project by time-share estate owners, their guests and other users. The cost for such insurance shall be a time-share expense.

9. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation.

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or time-share project for failure to comply with provisions of the time-share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures a time-share estate owner must be given reasonable notice and reasonable opportunity to be heard and explain the charges against him in person or in writing to the board of

directors of the association before a decision to impose discipline is rendered.

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share estate program and the time-share project.

12. Developer control period, during which time period the developer, or a managing agent selected by the developer, shall manage and control the time-share estate project and the common elements and units, including decisions about the financial operation of the association.

13. The managing agent, if any, shall be identified, and the section shall indicate any relationship between the managing agent and the developer. The duration of any management agreement shall be stated.

14. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the time-share project shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

15. Rules and regulations of the time-share estate association shall be discussed. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

B. For time-share use projects, if an association is formed for management and operation of the time-share use program and for the maintenance, repair, and furnishing of time-share use units comprising the time-share, the public offering statement shall contain a section captioned "Time-Share Owners' Association." This section shall contain the information required by subdivisions A 1 through 15 of this section as applicable to the association for the time-share use project.

18VAC48-45-280. Narrative sections; managing entity.

The public offering statement shall include a section captioned "Managing Entity." This section shall provide the name and address of the managing entity for the project. The section shall also provide a description of the facilities, if any, provided by the developer to the association in a time-share estate project for the management of the project.

18VAC48-45-290. Narrative sections; conversion time-share projects.

A. The public offering statement of a conversion time-share project shall contain a section captioned "Conversion Time-Share Projects." The section shall include the following:

1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project.

2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of the building or buildings within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the period during which such building or buildings were occupied.

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect.

4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

B. In lieu of a narrative section pursuant to this section, the requirements of this section may be satisfied in the form of an exhibit to the public offering statement.

18VAC48-45-300. Narrative sections; insurance.

The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance coverage provided by the developer or the association for the benefit of time-share owners not otherwise described in the public offering statement. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owner; and (ii) liability coverage will not insure against liability arising from an accident or injury occurring within a unit or as a result of the act or negligence of a time-share owner. The section shall include a statement whether the time-share owner is obligated to obtain coverage for any or all of the coverages described. The section shall include a statement indicating that the time-share owner should consult with an insurance professional to determine appropriate coverage.

18VAC48-45-310. Narrative sections; alternative purchase.

The public offering statement shall contain a section entitled "Alternative Purchases." The section shall state whether or not the developer has reserved the right to add to or delete from the time-share program any incidental benefit or alternative purchase. The section shall state that such alternative purchase has been or will be registered with the board. [~~If the developer chooses to include the public offering statement for the alternative purchase, the section shall reference the appropriate exhibit wherein the alternative purchase public offering statement may be located.~~]

18VAC48-45-320. Documents from other jurisdictions.

A. A substituted public offering statement shall only be permitted for a time-share program for which some portion of the time-share project associated with the program is located outside of Virginia.

B. The substituted public offering statement shall be prepared by deleting from the original disclosure document the following: (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the time-share project and its time-share program; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgment of receipt or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information that is untrue, inaccurate, or misleading with respect to marketing, offers, or disposition of time-shares in Virginia.

C. The substituted public offering statement shall incorporate all information not otherwise included that is necessary to effect fully and accurately the disclosures required by § 55-374 of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature that is different from the definitions provided in § 55-362 of the Code of Virginia.

D. The substituted public offering statement shall include as the first item of the summary of important considerations a statement that includes the following information: (i) the designation by which the original disclosure document is identified in the original jurisdiction; (ii) the governmental agency of such other jurisdiction where the original disclosure document is or will be filed; and (iii) the jurisdiction of such filing.

E. The provisions of §§ 55-374 and 55-376 of the Code of Virginia and 18VAC48-45-150, 18VAC48-45-160, and 18VAC48-45-170 shall apply to substituted public offering statements in the same manner and to the same extent that they apply to public offering statements.

F. In the case of a time-share project located outside of the Commonwealth, pursuant to subsection G of § 55-374 of the Code of Virginia, disclosure statements required by other situs laws governing time-sharing that are equivalent to the requirements of this chapter may be accepted as alternative disclosure statements.

Part VI
Time-Share Project Post-Registration Provisions

18VAC48-45-330. Minimum post-registration reporting requirements for a time-share project.

A. Subsequent to the issuance of a registration for a time-share by the board, the developer of a time-share shall do the following:

1. File an annual report in accordance with § 55-394.1 of the Code of Virginia and this chapter.

2. Upon the occurrence of a material change, file an amended public offering statement in accordance with the provisions of subsection E of § 55-374 and subsection C of § 55-394.1 of the Code of Virginia and this chapter. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.

3. Upon the occurrence of any material change in the information contained in the registration file, the developer shall immediately report such material changes to the board in accordance with the provisions of subsection B of § 55-391.1 of the Code of Virginia.

4. Notify the board of a change in the bond or letter of credit, as applicable, required by subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia.

5. File a completed application for registration of an unregistered phase or phases upon the expansion of the time-share, along with the appropriate fee specified in 18VAC48-45-70.

6. Notify the board of transition of control from the developer to the time-share estate owners' association (time-share estate projects only).

7. Submit appropriate documentation to the board once the registration is eligible for termination.

8. Submit to the board any other document or information, which may include information or documents that have been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

9. Submit to the board any document or information to make the registration file accurate and complete.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require a developer to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

18VAC48-45-340. Amendment of public offering statement.

Any amendment of the public offering statement or substituted public offering statement shall comply with this chapter.

18VAC48-45-350. Nonmaterial changes to the public offering statement.

Changes to the public offering statement that are not material are not required to be filed with the board, shall not be deemed an amendment of the public offering statement for the purposes of this chapter, and shall not give rise to a renewed right of rescission in any purchase. Nonmaterial

changes to the public offering statement include, but may not be limited to, the following:

1. Correction of spelling, grammar, omission, or other similar errors not affecting the substance of the public offering statement;

2. Changes in presentation or format;

3. Substitution of an executed, filed, or recorded copy of a document for the otherwise substantially identical unexecuted, unfiled, or unrecorded copy of the document that was previously submitted;

4. Inclusion of updated information such as identification or description of the current officers and directors of the developer;

5. Disclosure of completion of improvements for improvements that were previously proposed or not complete;

6. Changes in real estate tax assessment or rate or modifications related to those changes;

7. Changes in utility charges or rates or modifications related to those changes;

8. Addition or deletion of incidental benefits or alternative purchases provided the developer reserved in the time-share instrument the right to add or delete incidental benefits or alternative purchases [~~,~~]

9. Adoption of a new budget that does not result in a significant change in fees or assessments or significantly impact the rights or obligations of the prospective purchasers;

10. Modifications related to changes in insurance company or financial institution, policy, or amount for bonds or letters of credit required pursuant to §§ 55-375 and 55-386 of the Code of Virginia;

11. Changes in personnel of the managing agent; and

12. Any change that is the result of orderly development of the time-share in accordance with the time-share instruments as described in the public offering statement.

18VAC48-45-360. Filing of amended public offering statement.

A. The developer shall promptly file with the board for review a copy of the amended public offering statement together with a copy of a summary of proposed amendments that shall be distributed to purchasers during the board review period. The summary of proposed amendments shall enumerate the amendments to the public offering statement submitted for board review and include a statement that the amendments to the public offering statement have been filed with the board but have not yet been accepted. The form of the submission is at the discretion of the developer provided that (i) all amendments are clearly represented in the documentation presented; (ii) the additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted; and (iii) documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strikethroughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided.

B. The amended public offering statement submitted to the board for review shall include the effective date of the amendments.

C. Within 30 days of receipt of the amended public offering statement, the board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines that the amended public offering statement complies with this chapter, it shall notify the developer in writing and confirm the new effective date of the public offering statement.

D. If the board's review determines that the amended public offering statement does not comply with this chapter, it shall immediately notify the developer in writing that the review has determined the amended public offering statement is not in compliance and shall specify the particulars of such noncompliance. The developer shall then have 20 days in which to correct the particulars of noncompliance identified by the board. The developer may, prior to the completion of the 20-day correction period, request an extension in writing of the 20-day correction period. Upon expiration of the 20-day correction period, if requested corrections have not been made or a request for extension properly received, the board may issue a temporary cease and desist order in accordance with subdivision D 2 of § 55-396 of the Code of Virginia to require the cessation of sales until such time as affirmative action as directed by the board is taken. Use of the noncompliant public offering statement may result in further action by the board pursuant to §§ 55-396, 55-399.1, and 55-400 of the Code of Virginia.

E. Notwithstanding an extension of the 30-day period for review agreed to in writing by the board and developer, if the board does not perform the required review of the public offering statement in accordance with subsection C of this section, the amendment shall be deemed to comply with 18VAC48-45-150 through 18VAC48-45-310, and the new effective date shall be the effective date of the amendment provided pursuant to subsection B of this section.

F. In each case in which an amended document is filed pursuant to this section and the manner of its amendment is not apparent on the face of the document, the developer shall provide an indication of the manner and extent of amendment.

18VAC48-45-370. Current public offering statement.

A. Upon issuance of an effective date by the board, all purchasers who received a public offering statement and summary of proposed amendments during the board review

period pursuant to subsection A of 18VAC48-45-360 shall be provided with the public offering statement as accepted by the board. A public offering statement remains current until such time as the occurrence of a material change requires amendment of the public offering statement pursuant to this chapter and a new effective date is issued by the board.

B. Upon issuance of an effective date by the board, a public offering statement remains current until such time as a new effective date is established pursuant to this chapter.

C. Notwithstanding the board's authority to issue a cease and desist order pursuant to § 55-396 of the Code of Virginia, the filing of an amended public offering statement shall not require the developer to cease sales provided that the developer provides to purchasers the summary of proposed amendments pursuant to subsection A of 18VAC48-45-360 pending the issuance of a new effective date by the board.

18VAC48-45-380. Public offering statement not current; notification of purchasers.

A. A purchaser who has been delivered a public offering statement that is not current due to a material change and was not provided with the summary of proposed amendments containing the proposed changes to the amended public offering statement pursuant to subsection A of 18VAC48-45-360 pending the issuance of a new effective date by the board shall be notified of such fact by the developer.

B. A purchaser who has been delivered a public offering statement and summary of proposed amendments pursuant to subsection A of 18VAC48-45-360, but the amended public offering statement is determined to be noncompliant in accordance with subsection D of 18VAC48-45-360 [,] shall be notified of such fact by the developer.

1. The notification shall indicate that any contract for disposition of a time-share may be canceled by the purchaser pursuant to subsection C of § 55-376 of the Code of Virginia.

2. The developer shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

18VAC48-45-390. Filing of phase amendment application.

A. A phase amendment application for a time-share project shall be filed when adding a phase or phases to the time-share project. Such phase amendment application shall be accompanied by the fee provided for in 18VAC48-45-70 and shall be subject to all of the provisions of 18VAC48-45-50 and 18VAC48-45-110 [~~through~~, 18VAC48-45-120, and] 18VAC48-45-130. Documents on file with the board that have not changed in connection with the additional phase or phases need not be refiled, provided that the phase amendment application indicates that such documents are unchanged.

B. The application shall include a bond or letter of credit required pursuant to subsection B of § 55-386 of the Code of Virginia if any of the time-share units and common elements contained in the submitted additional phase or phases have not been completed.

C. The board shall review the phase amendment application and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines the phase amendment application complies with this chapter, it shall issue an amended order of registration for the time-share project and shall provide that previous orders and designations of the form, content, and effective date of the public offering statement are superseded. If the board's review determines that the phase amendment application is not complete, the board shall correspond with the developer to specify the particulars that must be completed to obtain compliance with this chapter.

18VAC48-45-400. Annual report for a time-share project registration required by developer.

A. A developer shall file an annual report for a time-share project registration on a form provided by the board to update the material contained in the registration file by June 30 of each year the registration is effective and shall be accompanied by the fee specified in 18VAC48-45-70. Prior to filing the annual report required by § 55-394.1 of the Code of Virginia, the developer shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the developer shall so certify in the annual report. If such public offering statement is not current, the developer shall amend the public offering statement and the annual report shall, in that event, include a filing in accordance with 18VAC48-45-360.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the developer;

2. Information concerning the current status of the time-share project;

3. Information concerning the current status of the time-share program, including (i) the type of time-shares being offered and sold; (ii) the total number of time-share interests available in the program; (iii) the total number of time-share interests sold; and (iv) information regarding any incomplete units and common elements;

4. If the project is a time-share estate project and the developer control period has not yet expired, a copy of the annual report that was prepared and distributed by the developer to the time-share owners required by § 55-370.1 of the Code of Virginia must accompany the annual report;

5. Date of the public offering statement currently being delivered to purchasers; and

6. Current evidence from the surety or financial institution of bonds or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia. Such verification shall provide the following:

a. Principal of bond or letter of credit;

b. Beneficiary of bond or letter of credit;

c. Name of the surety or financial institution that issued the bond or letter of credit;

d. Bond or letter of credit number as assigned by the issuer;

e. The dollar amount; and

f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

18VAC48-45-410. Board review of annual report for a time-share project registration.

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55-396, 55-399.1, and 55-400 of the Code of Virginia for failing to file an annual report as required by § 55-394.1 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with § 55-394.1 of the Code of Virginia.

18VAC48-45-420. Return of bond or letter of credit to ensure completion of promised units and common elements to developer.

A bond or letter of credit on file with the board pursuant to subsection B of § 55-386 of the Code of Virginia may be returned to the developer upon written request. Such request shall include a statement from the developer that indicates the units and common elements for which the bond or letter of credit was submitted have been completed. If the submitted statement is not sufficient to confirm completion, the board may request additional documentation.

18VAC48-45-430. Return of bond or letter of credit upon termination of time-share project registration.

Upon issuance of an order of termination of the time-share project registration pursuant to 18VAC48-45-450, the bond or letter of credit on file with the board for the purpose of protecting all deposits escrowed pursuant to subsection C of § 55-375 will be returned to the developer.

18VAC48-45-440. Maintenance of bond or letter of credit.

A. The developer shall report the extension, cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia within five days of the change.

B. The board at any time may request verification from the developer of the status of a bond or letter of credit on file with the board. Such verification shall comply with the provisions of subdivision B 6 of 18VAC48-45-400.

C. Failure to report a change in the bond or letter of credit in accordance with this section shall result in further action by the board pursuant to the Virginia Real Estate Time-Share Act.

18VAC48-45-450. Termination of time-share project registration.

A. The time-share project registration shall be terminated upon receipt of documentation of one of the following:

1. In accordance with subsection A of § 55-394.2 of the Code of Virginia, an annual report for a time-share estate program filed pursuant to § 55-394.1 of the Code of Virginia indicates that the developer has transferred title to the time-share owners' association and that no further development rights exist.

2. In accordance with subsection B of § 55-394.2 of the Code of Virginia, written notification is received from the developer attesting that no further development of the project is anticipated and that the developer has ceased sales of time-shares at the project.

B. Upon receipt and review of documentation pursuant to subsection A of this section, the board shall issue an order of termination for the time-share registration. The board may request additional information as necessary during the review of the submitted documentation to ensure that the time-share registration is eligible for termination.

18VAC48-45-460. Administrative termination of time-share project registration.

A. In accordance with subsection C of § 55-394.2 of the Code of Virginia, the board may administratively terminate the registration of a time-share project. Prior to the administrative termination of the registration, the board shall send written notice of its intent to terminate the registration to all known parties associated with the time-share project, including, but not limited to, the registered agent, developer's attorney, and principals of the developer. Such written notice shall be given to the parties by mail or otherwise if acknowledged by them in writing.

B. The board shall issue an order of termination for the time-share registration if (i) a response is not received within 30 days after sending the written notice, or (ii) the response received does not indicate termination of the registration is inappropriate in accordance with the Virginia Real Estate Time-Share Act and this chapter.

C. Nothing contained in this section shall prevent the board from taking further action as allowed by law including issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

18VAC48-45-470. Reporting of other changes to the time-share project.

Any other change made or known by the developer that may affect the accuracy or completeness of the time-share

registration file shall be reported promptly to the board. Such change may include but is not limited to the name of the developer, name of the time-share project, or any other changes in information submitted in accordance with § 55-391.1 of the Code of Virginia. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

Part VII
Alternative Purchase Registration

18VAC48-45-480. Registration of alternative purchase required.

As required by § [~~55-362~~ 55-394.5] of the Code of Virginia, a time-share developer shall register [~~as~~] an alternative purchase [~~anything valued in excess of $100 that is offered to a potential purchaser during the developer's sales presentation and purchased by such potential purchaser for more than $100, even though the purchaser did not purchase a time share. An alternative purchase is not a time share~~ as defined by § 55-362 of the Code of Virginia].

18VAC48-45-490. [~~Minimum requirements~~ Application] for registration of an alternative purchase.

[~~An application for registration of an alternative purchase shall include the following:~~

~~1. An application submitted in accordance with 18VAC48-45-50.~~

~~2. Current contact information for the developer.~~

~~3. The name of the time-share project or projects affiliated with the registered alternative purchase.~~

~~4. Public offering statement, or public offering statements, if applicable, submitted in accordance with 18VAC48-45-500. This may be accomplished through a single public offering statement that includes all types of alternative purchases offered by the developer, or a separate public offering statement for each type of alternative purchase offered by the developer.~~

~~5. The escrow bond or letter of credit submitted in compliance with subsection C of § 55-375 of the Code of Virginia, if applicable.~~

Application for registration of alternative purchase shall be filed with the board on an application form furnished by the board and shall contain all of the documents and information required by § 55-394.5 Code of Virginia.]

18VAC48-45-500. [~~Public offering statement for an alternative purchase.~~ (Reserved.)]

[~~The developer shall file with the board a public offering statement that will be distributed to each prospective purchaser about the alternative purchase. The public offering statement shall fully and accurately disclose the material characteristics of such alternative purchase as required by subsection H of § 55-374 of the Code of Virginia. The material characteristics of such alternative purchase may vary based on time of year and availability of offerings and may include, but are not limited to, vacation packages, meals, ancillary benefits or options, excursions, and retail products.~~

~~The public offering statement for an alternative purchase need not contain any information about the time-share project, time-share program, or the time-shares offered by the developer initially offered to such purchaser by the developer. The public offering statement for an alternative purchase is not required to have exhibits.~~]

18VAC48-45-510. Review of application for registration of an alternative purchase.

At such time as the board affirmatively determines that the requirements of this chapter have been met, the board shall register the alternative purchase [~~and shall designate the form, content, and effective date of the public offering statement to be used~~]. The registration period of the alternative purchase shall expire the last day of the month one year from the date of issuance.

18VAC48-45-520. Minimum alternative purchase post-registration reporting requirements.

A. Subsequent to the issuance of a registration for an alternative purchase by the board, the developer offering the alternative purchase shall do the following:

1. File the annual report required pursuant to 18VAC48-45-540.

[~~2. Upon the occurrence of a material change to the public offering statement, the developer of a registered alternative purchase shall file an amended public offering statement. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.~~

~~3.~~ 2.] Upon the occurrence of any material change in the information contained in the registration file, the developer of a registered alternative purchase shall [~~immediately report such material changes to the board~~ file the material change with the board within 30 days of the effective date of the material change.

~~4.~~ 3.] Submit appropriate documentation to the board once the registration is eligible for termination.

[~~5.~~ 4.] Submit to the board any other document or information, which may include information or documents that have been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

[~~6.~~ 5.] Submit to the board any document or information to make the registration file accurate and complete and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

[~~7. Submit to the board the escrow bond or letter of credit for any deposits for the alternative purchase that are held in escrow pursuant to § 55-375 of the Code of Virginia. If the bond or letter of credit for protecting all alternative~~

~~purchase deposits escrowed is the same as the bond or letter of credit for the time share project registration, the applicant shall so state.~~]

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require the developer of a registered alternative purchase to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

18VAC48-45-530. [~~Filing of amended public offering statement for alternative purchase.~~ (Reserved.)]

[~~A. The developer shall promptly file with the board for review a copy of the amended public offering statement. The form of the submission is at the discretion of the developer, provided that (i) all amendments are clearly represented in the documentation presented; (ii) the additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted; and (iii) documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strike throughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided.~~

~~B. The amended public offering statement submitted to the board for review shall include the effective date of the amendments.~~

~~C. Within 30 days of receipt, the board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines that the amended public offering statement complies with this chapter, it shall notify the developer in writing and confirm the new effective date of the public offering statement.~~

~~D. If the board's review determines that the amended public offering statement does not comply with this chapter, the board shall immediately notify the developer in writing that the review has determined the amended public offering statement is not in compliance and shall specify the particulars of such noncompliance. The developer shall then have 20 days in which to correct the particulars of noncompliance identified by the board. The developer may, prior to the completion of the 20 day correction period, request an extension in writing of the 20 day correction period. Upon expiration of the 20 day correction period, if requested corrections have not been made or a request for extension properly received, the board may issue a temporary cease and desist order in accordance with subsection B of § 55 396 of the Code of Virginia to require the cessation of sales until such time as affirmative action as directed by the board is taken. Use of the noncompliant public offering statement may result in further action by the board pursuant to §§ 55 396, 55 399.1, and 55 400 of the Code of Virginia.~~

~~E. Notwithstanding an extension of the 30 day period for review agreed to in writing by the board and developer, if the board does not perform the required review of the public offering statement in accordance with subsection C of this section, the amendment shall be deemed to comply with 18VAC48 45 490, and the new effective date shall be the effective date of the amendment provided pursuant to subsection B of this section.~~

~~F. In each case in which an amended document is filed pursuant to this section and the manner of its amendment is not apparent on the face of the document, the developer shall provide an indication of the manner and extent of amendment.~~]

18VAC48-45-540. Annual report required for alternative purchase registration.

A. Prior to the expiration of the registration, the developer shall file an annual report in a form approved by the board for the registered alternative purchase affiliated with such time-share project registration. Such alternative purchase annual report shall be accompanied by the fee specified in 18VAC48-45-70.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the developer.

[~~2. The name of the time share project or projects affiliated with the registered alternative purchase.~~

~~3.~~ 2.] Information concerning the current status of the alternative purchase.

[~~4. Current evidence from the surety or financial institution of any bonds or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to subsection C of § 55 375 of the Code of Virginia. Such verification shall provide the following:~~

~~a. Principal of bond or letter of credit;~~

~~b. Beneficiary of bond or letter of credit;~~

~~c. Name of the surety or financial institution that issued the bond or letter of credit;~~

~~d. Bond or letter of credit number as assigned by the issuer;~~

~~e. The dollar amount; and~~

~~f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.~~

~~5. The date of the public offering statement currently being delivered to purchasers.~~

C. Once the annual report has been accepted by the board, the registration shall be extended for an additional one-year period from the date of the expiration of the registration. If the developer fails to complete the annual report filing within one year after the date of expiration, the registration shall not

be extended and the developer must apply as a new applicant.]

18VAC48-45-550. [~~Board review of annual report for an alternative purchase registration.~~ (Reserved.)]

[~~A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.~~

~~B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55-396 and 55-399.1 of the Code of Virginia.~~

~~C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be accepted and the alternative purchase registration shall be continued to run concurrent with the time-share project registration with which it is affiliated.~~

~~D. Once the annual report has been accepted by the board, the registration shall be extended for an additional one-year period from the date of expiration of the registration. If the developer fails to complete the annual report filing within one year after the date of expiration, the registration shall not be extended and the developer must apply as a new applicant.~~]

18VAC48-45-560. Termination of registration for an alternative purchase.

A. The alternative purchase registration shall be terminated upon receipt of written notification from the developer attesting that the developer has ceased sales and requests termination of the alternative purchase. Should the developer later choose to offer alternative purchases for which the registration has been terminated in accordance with this subsection, prior to offering an alternative purchase, the developer must submit a new application for registration of the alternative purchase, meet all requirements in effect at the time of application, and obtain an alternative purchase registration from the board.

B. Upon receipt and review of the notification pursuant to subsection A of this section, the board shall terminate the alternative purchase registration. The board may request additional information as necessary during the review of the submitted notification to ensure that the alternative purchase registration is eligible for termination.

[~~C. If all affiliated time-share project registrations are terminated pursuant to 18VAC48-45-450 or 18VAC48-45-460, such terminations shall result in the automatic termination of the affiliated alternative purchase registration.~~

~~D.~~ C.] An alternative purchase registration shall be automatically terminated for failure to file an acceptable annual report within one year after the expiration of the registration.

18VAC48-45-570. Reporting of other changes to the alternative purchase.

[~~Any other~~ In accordance with subsection B of § 55.394.5 of the Code of Virginia, any material] change made or known by the developer that may affect the accuracy or completeness of the alternative purchase registration file shall be [~~promptly reported to~~ filed with] the board [within 30 days of the effective date of the change]. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

Part VIII
Exchange Program Registration

18VAC48-45-580. Registration of exchange program required.

As required by § 55-374.2 of the Code of Virginia, an exchange company that offers an exchange program in the Commonwealth shall register the exchange program with the board.

18VAC48-45-590. Minimum requirements for registration of an exchange program.

An application for registration of an exchange program shall include the following:

1. An application submitted in accordance with 18VAC48-45-50;

2. Current contact information for the exchange company;

3. A disclosure document that complies with § 55-374.2 of the Code of Virginia; and

4. A report independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants. The report shall provide the following for the preceding calendar year:

a. The number of owners enrolled in the exchange program. Such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;

b. The number of time-share properties, accommodations or facilities eligible to participate in the exchange program;

c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

d. The number of time-shares for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time-share during the year in exchange for a time-share in any future year; and

e. The number of exchanges confirmed by the exchange company during the year.

18VAC48-45-600. Minimum exchange program post-registration reporting requirements.

A. Subsequent to the issuance of a registration for an exchange program by the board, the exchange company shall:

1. File an annual report in accordance with subsection E of § 55-374.2 of the Code of Virginia and this chapter.

2. Upon the occurrence of a material change to the disclosure document, the exchange company shall file an amended disclosure document in accordance with the provisions of § 55-374.2 of the Code of Virginia and this chapter. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.

3. Upon the occurrence of any material change in the information contained in the registration file, the exchange company shall immediately report such material changes to the board.

4. Submit appropriate documentation to the board once the registration is eligible for termination.

5. Submit to the board any other document or information, which may include information or documents that have been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

6. Submit to the board any document or information to make the registration file accurate and complete to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require an exchange company to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

18VAC48-45-610. Annual report required for an exchange program registration.

A. An exchange company shall file an annual report to update the material contained in the exchange program registration file by July 1 of each year the registration is effective and shall be accompanied by the fee specified in 18VAC48-45-70.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the exchange company;

2. Information concerning the current status of the exchange program;

3. A report that contains the information in subdivision 4 of 18VAC48-45-590 and submitted in compliance with subdivision A 17 of § 55-374.2 of the Code of Virginia.

18VAC48-45-620. Board review of annual report for exchange program registration.

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55-396, 55-399.1, and 55-400 of the Code of Virginia for failing to file an annual report as required by subsection E of § 55-374.2 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with subsection E of § 55-374.2 of the Code of Virginia.

18VAC48-45-630. Termination of an exchange program registration.

A. The exchange program registration shall be terminated upon receipt of written notification from the exchange company indicating that the exchange program is no longer being offered in the Commonwealth. Should the exchange company later choose to offer the exchange program for which the registration has been terminated in accordance with this subsection, prior to offering the exchange program, the exchange company must submit a new application for registration of the exchange program, meet all requirements in effect at the time of application, and be issued an order of registration for the exchange program by the board.

B. Upon receipt and review of the notification pursuant to subsection A of this section, the board shall issue an order of termination for the exchange program registration. The board may request additional information as necessary during the review of the submitted notification to ensure that the exchange program registration is eligible for termination.

18VAC48-45-640. Reporting of other changes to an exchange program.

Any other change made or known by the exchange company that may affect the accuracy or completeness of the exchange program registration file shall be promptly reported to the board. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

Part IX
Time-Share Reseller Registration

18VAC48-45-650. Registration of time-share reseller required.

In accordance with § 55-394.3 of the Code of Virginia, a reseller shall not offer or provide any resale service without

holding a current time-share reseller registration issued by the board.

18VAC48-45-660. Exemptions from time-share reseller registration.

Time-share reseller registration shall not apply to the following:

1. A person that solely or with affiliates engages in a resale service with respect to an aggregate of no more than 12 resale time-shares per calendar year;

2. A person that owns or acquires more than 12 resale time-shares and subsequently transfers all such resale time-shares to a single purchaser in a single transaction;

3. The owner, owner's agents, and employees of a regularly published newspaper, magazine, or other periodical publication of general circulation; broadcast station; website; or billboard, to the extent their activities are limited to solicitation and publication of advertisements and the transmission of responses to the persons who place the advertisements. Any person that would otherwise be exempt from this chapter pursuant to this section shall not be exempt if the person (i) solicits the placement of the advertisement by representing that the advertisement will generate cash, a certain price, or a similar type of representation for the time-share owner's resale time-share, (ii) makes a recommendation as to the sales price for which to advertise the resale time-share, (iii) makes representations to the person placing the advertisement regarding the success rate for selling resale time-shares advertised with such person, or (iv) makes misrepresentations as described in this chapter;

4. Sale by a developer or a party acting on its behalf of a resale time-share under a current registration of the time-share program in which the resale time-share is included;

5. Sale by an association, managing entity, or a party acting on its behalf of a resale time-share owned by the association provided the sale is in compliance with subsection C of § 55-380.1; or

6. Attorneys, title agents, title companies, or escrow companies providing closing services in connection with the transfer of a resale time-share.

18VAC48-45-670. Requirements for registration as a time-share reseller.

A. Individuals or firms that provide any time-share resale services shall submit an application on a form prescribed by the board and shall meet the requirements of this section, including:

1. The information contained in § 55-394.3 of the Code of Virginia.

2. The application fee specified in 18VAC48-45-70.

3. All contact information applicable to the time-share reseller and the lead dealer.

B. Any individual or firm offering resale services as defined in § 55-362 of the Code of Virginia shall be registered with the board. All names under which the time-share reseller conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant for a time-share reseller registration shall disclose the firm's mailing address and the firm's physical address. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for a time-share reseller registration shall disclose the following information about the firm, the lead dealer, and any of the principals of the firm, if applicable:

1. All felony convictions.

2. All misdemeanor convictions in any jurisdiction that occurred within three years before the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant shall obtain and maintain a bond or letter of credit pursuant to § 55-375 of the Code of Virginia, for the purpose of protecting deposits and refundable moneys received by a time-share reseller from clients in the Commonwealth of Virginia in connection with the purchase, acquisition, or sale of a time-share.

F. The applicant for time-share reseller registration shall be in compliance with the standards of conduct set forth in Part X (18VAC48-45-720 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the registration is in effect.

G. The applicant for time-share reseller registration, the lead dealer, and all principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered, and the board, in its discretion, may deny registration to [,] any applicant who has been subject to, or whose lead dealer or principals have been subject to, any form of adverse disciplinary action, including but not limited to, reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any

other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining registration in Virginia.

H. The applicant for time-share reseller registration shall provide all relevant information about the firm, the lead dealer, and of the principals of the firm for the seven years prior to application on outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies and specifically shall provide all relevant financial information related to providing resale services as defined in § 55-362 of the Code of Virginia.

I. The application for time-share reseller registration shall include the exhibits required pursuant to 18VAC48-45-680.

18VAC48-45-680. Exhibits required for registration as a time-share reseller.

A. The following documents shall be included as exhibits to the application for registration. All exhibits shall be labeled as indicated and submitted in a format acceptable to the board.

1. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission, or any other entity formation documents, together with any trade or fictitious name certificate.

2. Exhibit B: A copy of the resale purchase contract.

3. Exhibit C: A copy of the resale transfer contract.

4. Exhibit D: A copy of disclosures required by § 55-380.1 of the Code of Virginia.

5. Exhibit E: A narrative description of the marketing or advertising plan.

6. Exhibit F: A bond or letter of credit in accordance with subsection E of 18VAC48-45-670.

B. The board has the sole discretion to require additional information or amendment of existing information as the board finds necessary to ensure full and accurate disclosure and compliance with the provisions of § 55-380.1 of the Code of Virginia and to ensure compliance with the provisions of § 55-394.3 of the Code of Virginia.

18VAC48-45-690. Renewal and reinstatement of a time-share reseller registration.

A. A time-share reseller registration issued under this chapter shall expire one year from the last day of the month in which it was issued. The fee specified in 18VAC48-45-70 shall be required for renewal.

B. Prior to the expiration date shown on the registration, a registration shall be renewed upon payment of the fees specified in 18VAC48-45-70 and submittal of proof of a current bond or letter of credit required in accordance with subsection E of 18VAC48-45-670.

C. The board will send a renewal notice to the regulant at the last known address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the registration may be submitted with the required fees as an application for renewal. By submitting a renewal fee, the regulant is certifying continued compliance with this chapter, as applicable, and certifying that all documents required for registration pursuant to 18VAC48-45-680 on file with the board reflect the most current version used by the reseller.

D. If the requirements for renewal of a registration as specified in this chapter are not completed more than 30 days and within six months after the registration expiration date, the reinstatement fee specified in 18VAC48-50-70 shall be required.

E. A registration may be reinstated for up to six months following the expiration date. After six months, the registration may not be reinstated under any circumstances and the firm or individual must meet all current entry requirements and apply as a new applicant.

F. The board may deny renewal or reinstatement of registration for the same reasons as it may refuse initial registration or discipline a registrant.

G. The date the renewal application and fee are received in the office of the board shall determine whether a registration shall be renewed without reinstatement, or shall be subject to reinstatement application procedures.

H. A registration that is reinstated shall be regarded as having been continuously registered without interruption. Therefore, the registration holder shall remain under the disciplinary authority of the board during the entire period and shall be accountable for its activities during the period. Nothing in this chapter shall divest the board of its authority to discipline a registration holder for a violation of the law or regulation during the period of time for which the regulant was registered.

I. Applicants for renewal shall continue to meet all of the qualifications for registration set forth in 18VAC48-45-680.

18VAC48-45-700. Maintenance of time-share reseller registration.

Any material changes made or known by the time-share reseller that may affect the accuracy or completeness of the time-share reseller registration file shall be promptly reported to the board. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

18VAC48-45-710. Recordkeeping for a time-share reseller registration.

A time-share reseller registered by the board shall comply with the recordkeeping provisions of § 55-394.4 of the Code of Virginia.

Part X
Board Authority and Standards of Conduct

18VAC48-45-720. Grounds for disciplinary action.

The board may revoke a registration that is not in compliance with any provision of the regulations of the board or the Virginia Real Estate Time-Share Act. Additional action may include issuance of a temporary cease and desist order, issuance of a cease and desist order, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

18VAC48-45-730. Registration required.

A. No developer or agent of a developer shall offer a time-share prior to the registration of the time-share program and time-share project.

B. No developer or agent of a developer shall offer an alternative purchase prior to the registration of the alternative purchase by the developer.

C. No exchange company or agent of an exchange company shall offer an exchange program prior to the registration of the exchange program by the exchange company.

D. No time-share reseller or agent of a time-share reseller shall offer any resale services prior to the registration of the time-share reseller.

18VAC48-45-740. Time-share advertising standards.

A. No promise, assertion, representation, or statement of fact or opinion in connection with a time-share marketing activity shall be made that is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances, or features of a time-share program or a time-share project.

B. No promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity shall indicate that a unit or common element will be built or placed on the time-share unless proposed within the meaning of subsection A of 18VAC48-45-200.

C. No promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity and relating to a time-share project not registered shall, by its express terms, induce, solicit, or encourage a contract for sale or performing some other act that would create or purport to create a legal or equitable interest in the time-share, other than a security interest in or a nonbinding reservation of the time-share, when to do so would circumvent the provisions of the Virginia Real Estate Time-Share Act.

18VAC48-45-750. Board oversight of public offering statement and exchange program disclosure document.

A. The board at any time may require a developer to alter or amend the public offering statement for a time-share [~~or an alternative purchase~~] or an exchange program disclosure document to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

B. The board does not approve or recommend the time-share [~~, alternative purchase,~~] or exchange program, or disposition thereof. The board's issuance of an effective date for a public offering statement or acceptance of an exchange program disclosure document shall not be construed to (i) constitute approval of the time-share [~~, alternative purchase,~~] or exchange program; (ii) represent that the board asserts that either all facts or material changes or both concerning the time-share [~~, alternative purchase,~~] or exchange program have been fully and accurately disclosed; or (iii) indicate that the board has made judgment on the value or merits of the time-share [~~, alternative purchase,~~] or exchange program.

18VAC48-45-760. Response to inquiry and provision of records.

A. The developer, exchange company, or reseller must respond within 15 days to a request by the board or any of its agents regarding any complaint filed with the department. The board may extend such [~~time frame~~ timeframe] upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

B. Unless otherwise specified by the board, the developer, exchange company, or reseller shall produce to the board or any of its agents within 15 days of the request any document, book, or record concerning any transaction in which the developer, exchange company, or reseller was involved, or for which the developer, exchange company, or reseller is required to maintain records, for inspection and copying by the board or its agents. The board may extend such [~~time frame~~ timeframe] upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

C. A developer, exchange company, or reseller shall not provide a false, misleading, or incomplete response to the board or any agent of the board seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a developer, exchange company, or reseller must respond to an inquiry by the board or its agent within 21 days.

18VAC48-45-770. Prohibited acts.

The following acts are prohibited and any violation may result in action by the board, including but not limited to issuance of a temporary cease and desist order in accordance with subdivision D 2 of § 55-396 of the Code of Virginia:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any regulation of the board or the Virginia Real Estate Time-Share Act or engaging in any act enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

2. Obtaining or attempting to obtain a registration by false or fraudulent representation, or maintaining, renewing, or

reinstating a registration by false or fraudulent representation.

3. Failing to alter or amend the public offering statement or disclosure document as required in accordance with the provisions of this chapter.

4. Providing information to purchasers in a manner that willfully and intentionally fails to promote full and accurate disclosure.

5. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

6. Failing to provide information or documents, or amendments thereof, in accordance with this chapter.

7. Failing to comply with the post-registration requirements of this chapter.

8. Filing false or misleading information in the course of terminating a registration in accordance with 18VAC48-45-460, [~~18VAC48-45-540~~ 18VAC48-50-560], or [~~18VAC48-45-610~~ 18VAC48-50-630].

9. Failing to comply with the advertising standards contained in Part III [~~(18VAC48-45-50~~ (18VAC48-45-80] et seq.) of this chapter.

10. Failing to notify the board of the cancellation, amendment, expiration, termination, or any other change that affects the validity of a bond or letter of credit required pursuant to subsection E of 18VAC48-45-670.

11. Allowing a registration issued by the board to be used by another.

12. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation [~~enumerated~~ described] in [subdivisions C 13 and C 14 of] 18VAC48-45-130, [subdivisions 4 and 5 of] 18VAC48-45-210, and [subsections D, G, and H of] 18VAC48-45-670.

13. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation [~~enumerated~~ described] in [subsections D, G, and H of] 18VAC48-45-670.

14. Failing to report a change as required by 18VAC48-45-470.

15. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

16. Misrepresenting or misusing the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.

17. Engaging in dishonest of fraudulent conduct in providing resale services, including but not limited to the following:

a. The intentional and unjustified failure to comply with the terms of the resale purchase contract or resale transfer contract.

b. Engaging in dishonest or fraudulent conduct in providing resale services.

c. Failing to comply with the recordkeeping requirements of § 55-394.4 of the Code of Virginia.

d. Failing to disclose information in writing concerning the marketing, sale, or transfer of resale time-shares required by this chapter prior to accepting any consideration or with the expectation of receiving consideration from any time-share owner, seller, or buyer.

e. Making false or misleading statements concerning offers to buy or rent; the value, pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in time-share resale activities.

f. Misrepresenting the likelihood of selling a resale time-share interest.

g. Misrepresenting the method by or source from which the reseller or lead dealer obtained the contact information of any time-share owner.

h. Misrepresenting price or value increases or decreases, assessments, special assessments, maintenance fees, or taxes or guaranteeing sales or rentals in order to obtain money or property.

i. Making false or misleading statements concerning the identity of the reseller or any of its affiliates or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services, fees, or commissions, availability of refunds, length of time in business, or endorsements by or affiliations with developers, management companies, or any other third party.

j. Misrepresenting whether or not the reseller or its affiliates, employees, or agents hold, in any state or jurisdiction, a current real estate sales or broker's license or other government-required license.

k. Misrepresenting how funds will be utilized in any time-share resale activity conducted by the reseller.

l. Misrepresenting that the reseller or its affiliates, employees, or agents have specialized education, professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.

m. Making false or misleading statements concerning the conditions under which a time-share owner, seller, or buyer may exchange or occupy the resale time-share interest.

n. Representing that any gift, prize, membership, or other benefit or service will be provided to any time-share owner, seller, or buyer without providing such gift, prize, membership, or other benefit or service in the manner represented.

o. Misrepresenting the nature of any resale time-share interest or the related time-share plan.

p. Misrepresenting the amount of the proceeds, or failing to pay the proceeds, of any rental or sale of a resale time-share interest as offered by a potential renter or buyer to the time-share owner who made such resale time-share interest available for rental or sale through the reseller.

q. Failing to transfer any resale time-share interests as represented and required by this chapter or to provide written evidence to the time-share owner of the recording or transfer of such time-share owner's resale time-share interest as required by this chapter.

r. Failing to pay any annual assessments, special assessments, personal property or real estate taxes, or other fees relating to an owner's resale time-share interest as represented or required by this chapter.

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 (18VAC48-45)

Time-Share Amendment Application A492-0515AMEND-v1 (eff. 9/2013)

Time-Share Annual Report A492-0515ANRPT-v2 (eff. 5/2014)

Time-Share Building Status Form A492-0515BLDST-v1 (eff. 9/2013)

Time-Share Bond/Letter of Credit Verification Form A492-0515BOND-v1 (eff. 9/2013)

Time-Share Registration Application A492-0515REG-v1 (eff. 9/2013)

Time-Share Exchange Company Annual Report A492-0516ANRPT-v1 (eff. 9/2013)

Time-Share Exchange Company Registration Application A492-0516REG-v1 (eff. 9/2013)

[Alternative Purchase Annual Report A492-0524ANRPT-v1 (eff. 10/2015)

Alternative Purchase Registration Application A492-0524REG-v1 (eff. 10/2015)

Time-Share Reseller Bond/Letter of Credit Verification Form A492-0525BOND-v1 (eff. 1/2016)

Time-Share Reseller Lead Dealer Change Form A492-0525LDCHG-v1 (eff. 1/2016)

Time-Share Reseller Application A492-0525REG-v1 (eff. 2015)]

VA.R. Doc. No. R13-3613; Filed December 11, 2015, 9:38 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Proposed Regulation

Titles of Regulations: **22VAC45-50. Regulation Governing Provisions of Services in Vocational Rehabilitation (repealing 22VAC45-50-10 through 22VAC45-50-150).**

22VAC45-51. Regulations Governing Provisions of Services in Vocational Rehabilitation (adding 22VAC45-51-10 through 22VAC45-51-140).

Statutory Authority: § 51.5-66 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 11, 2016.

Agency Contact: Susan D. Payne, Program Director, Vocational Rehabilitation, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3351, TTY (804) 371-3140, or email susan.payne@dbvi.virginia.gov.

Basis: Section 51.5-65 of the Code of Virginia authorizes the Commissioner of the Department for the Blind and Vision Impaired to promulgate regulations to carry out the applicable provisions of Title 51.1 (Persons with Disabilities) of the Code of Virginia.

Purpose: This proposed action repeals existing regulations (22VAC45-50) concurrently with promulgating new regulations (22VAC45-51) to update Virginia's Regulations Governing Provision of Services in Vocational Rehabilitation. The action ensures that blind, visually impaired, and deafblind citizens receiving vocational rehabilitation services from the department have accurate and clearly articulated regulations regarding vocational rehabilitation services that are consistent with federal regulations.

Substance: 22VAC45-50 is outdated and subsequently inconsistent with federal regulations. 22VAC45-51 conforms existing regulations to the federal regulations at 34 CFR Part 361, incorporates the name changes for two agencies, removes Department for the Blind and Vision Impaired policy language, removes one section that is not necessary to ensure compliance with federal regulations, separates one section into two separate sections to provide greater clarity, and combines two other sections that are duplicative.

Issues: The proposed regulatory action poses no disadvantages to the public or the Commonwealth. Blind, visually impaired, and deafblind citizens, their family members, consumer groups, state and local government entities, and others in the Commonwealth benefit from the promulgation of new regulations that are clearer, so easier to understand, and provide an accurate explanation of the

vocational rehabilitation services available to eligible Virginians.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commissioner for the Department of Blind and Vision Impaired (DBVI) proposes to repeal the Department's regulation that governs vocational rehabilitation services (22VAC45-50) and replace it with a regulation (22VAC45-51) that has been reorganized and updated and that additionally has one substantive change. Specifically, the Commissioner proposes to repeal language which specifically mentions provision of services for American Indians.

Result of Analysis. Benefits outweigh costs for all proposed regulatory changes.

Estimated Economic Impact. The current regulation that governs DBVI's provision of vocational rehabilitation services was last amended in 1990. Since then, much of the language in the regulation has become obsolete including the name of the agency the Commissioner heads, which used to be known as the Department for the Visually Handicapped. Because this regulation is so substantially out-of-date, the Commissioner now proposes to repeal it and promulgate a new regulation that updates and reorganizes sections so that information is easier to find. No entity is likely to incur costs on account of this reorganization; all affected entities are likely to benefit from having this regulation updated so that it correctly reflects terminology that has changed since 1990 as this will reduce possible confusion.

The Commissioner also proposes to repeal language in current regulation which specifies that American Indians will be provided vocational rehabilitation services to the same extent, and in the same fashion, as other eligible individuals (this language is in 22VAC45-50-70). DBVI staff reports that this language is being removed because it only applies to federally recognized Indian tribes and Virginia has no such tribes. The newly promulgated regulation will retain language that prohibits discrimination against any individual who seeks vocational rehabilitation services. Because of this, no American Indian who is a citizen of the Commonwealth, and is also a citizen of a federally recognized Indian tribe based in another state, is likely to be denied services on account of the repeal of 22VAC45-50-70.

Businesses and Entities Affected. These proposed regulatory changes will affect all individuals who receive vocational rehabilitation services through DBVI. There are currently approximately 1,400 such individuals in the Commonwealth.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to significantly affect employment.

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

Small Businesses: Costs and Other Effects. No small business in the Commonwealth is likely to incur costs on account of these proposed regulatory changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business in the Commonwealth is likely to incur costs on account of these proposed regulatory changes.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs.

Agency's Response to Economic Impact Analysis: As indicated in DBVI's agency statement as modified on October 23, 2013, and the Department of Planning and Budget economic impact analysis as modified on April 7, 2014, DBVI's proposed regulations do not cause DBVI to incur any additional cost to implement and enforce the proposed regulations since the existing regulation (22VAC45-50, Regulation Governing Provision of Services in Vocational Rehabilitation) is already in effect and enforced, and there will be no additional cost incurred by individuals, businesses, or other entities. It is unlikely that additional costs will be incurred by any entity. All affected entities are likely to benefit from having this regulation updated so that it correctly reflects terminology that has changed since 1990 as this will reduce possible confusion.

Entities affected by the overall proposed regulations, without regard to costs incurred as stated earlier, include individuals who are blind and visually impaired applying for or receiving vocational rehabilitation services, approximately 1,450 individuals annually. The newly promulgated regulation will retain language that prohibits discrimination against any individual who seeks vocational rehabilitation services.

Summary:

The proposed action replaces existing regulations governing vocational rehabilitation services (22VAC45-50) with new regulations (22VAC45-51) that are reorganized and updated to comport with federal requirements, remove duplicative provisions, and remove agency policy language. In addition, the language pertaining to provision of services for American Indians is repealed because the language only applies to federally recognized Indian tribes and Virginia has no such tribes.

CHAPTER 51
REGULATIONS GOVERNING PROVISION OF SERVICES IN VOCATIONAL REHABILITATION

22VAC45-51-10. Definitions.

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

"Applicant" means an individual who submits an application for vocational rehabilitation services.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunication services and audio recordings, Brailed and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device including:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitation plans and programs;

5. Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

"Blind" means having not better than 20/200 central visual acuity in the better eye measured at 20 feet with correcting lenses or having visual acuity greater than 20/200 but with the widest diameter of the visual field in the better eye subtending an angle of no greater than 20 degrees, measured at a distance of 33 centimeters using a three-millimeter white-test object, a Goldman III-4e target, or other equivalent equipment. Such blindness shall be certified by a duly licensed physician or optometrist. (§ 51.5-60 of the Code of Virginia)

"Client assistance program" means the program located within the disAbility Law Center of Virginia for the purpose of advising applicants or eligible individuals about all available services under the Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act of 2014 (29 USC § 3101 et seq.), as amended, and to assist them in their relationship with programs, projects, and facilities providing rehabilitation services.

"Community rehabilitation program" means a program that provides directly or facilitates the provision of one or more of the allowable vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement.

"Comparable services and benefits" means services and benefits that are (i) provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; (ii) available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment and (iii) commensurate to the services that the individual would otherwise receive from the designated state vocational rehabilitation agency. For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"DBVI" means the Department for the Blind and Vision Impaired.

"Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements in 22VAC45-51-40.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable, supported employment, or any other type of employment, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 USC § 201 et seq.) and any needed support services to an individual with a disability to

enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

"Extended services," as used in the definition of "supported employment," means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a state agency, a private nonprofit organization, an employer, or any other appropriate resource from funds other than funds received under 34 CFR Part 361 and 34 CFR Part 363 after an individual with a most significant disability has made the transition from support provided by DBVI.

"Family member" for the purposes of receiving vocational rehabilitation services means an individual who is either a relative or guardian of an applicant or eligible individual or lives in the same household as an applicant or eligible individual who has a substantial interest in the well-being of that individual and whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

"Financial need test" means the test developed by DBVI and used to consider the financial need of applicants or eligible individuals with blindness or visual impairment for the purpose of determining the extent of their participation in the costs of vocational rehabilitation services.

"Impartial hearing officer" means an individual who is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education; is not a member of the State Rehabilitation Council for the Blind and Vision Impaired; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services; has received training with respect to the performance of official duties; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual. An individual is not considered to be an employee of DBVI for the purposes of this definition solely because the individual is paid by the DBVI to serve as a hearing officer (34 CFR 361.5(b)(25)).

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

"Individual with a most significant disability" means an individual who has no functional vision or is significantly visually impaired; has a secondary disability that profoundly limits two or more life activities, such as mobility, communication, self-care, interpersonal skills, self-direction, work tolerance, or work skills in terms of achieving an employment outcome; and the individual's vocational rehabilitation is expected to require three or more vocational rehabilitation services for one year or more.

"Individual with a significant disability" means the significant visual impairment does not enable the individual to obtain a driver's license in Virginia with normal correction; "seriously limits" one or more life activities, such as mobility, communication, self-care, interpersonal skills, self-direction, work tolerance, or work skills, in terms of achieving an employment outcome; and the individual's vocational rehabilitation shall require two or more substantial vocational rehabilitation services for a minimum of three months.

"Individualized plan for employment" or "IPE" means a unique plan for employment that is customized for each eligible individual receiving vocational rehabilitation services.

"Integrated setting," with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

"Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation services under an individualized plan for employment.

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other remedies.

"One-stop center" means a center designed to provide a full range of assistance to job seekers under one roof. Established under the Workforce Innovation and Opportunity Act of 2014 (29 USC § 3101 et seq.), the centers offer training, career counseling, job listings, and similar employment-related services.

"On-the-job training" means job training received in a real work environment for individuals who are job ready.

"Ophthalmologist" means a physician specializing in diseases of the eye.

"Optometrist" means any person practicing the profession of optometry as defined by § 54.1-3200 of the the Code of Virginia and regulations of the Board of Optometry (18VAC105-20).

"Order of selection" means the order defined in the state plan for vocational rehabilitation services that DBVI shall follow in selecting eligible individuals to be provided vocational rehabilitation services when DBVI determines that

it is unable to provide the full range of vocational rehabilitation services to all eligible individuals.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. These services shall be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. These services may include training in managing, supervising, and directing personal assistance services.

"Personal information" means all information that describes, locates, or indexes anything about an individual including (i) social security number, driver's license number, agency-issued identification number, student identification number, or real or personal property holdings derived from tax returns and (ii) education, financial transactions, medical history, or employment record.

"Post-employment services" means one or more of the services identified in 22VAC45-51-80 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Profoundly limits" means the individual is unable to use vision (with or without visual aids) to assist him in performing such functions as mobility, communication, self-care, interpersonal skills, self-direction, work tolerance, or work skills and the individual has not acquired the adaptive skills to compensate for the lack of functional vision.

"Qualified and impartial mediator" means an individual who is not an employee of a public agency other than an administrative law judge, hearing examiner, employee of a state office of mediators, or employee of an institution of higher education; is not a member of the State Rehabilitation Council for the Blind and Vision Impaired; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any state-approved or recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of DBVI for the purposes of this definition solely because the individual is paid by DBVI to serve as a mediator.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

"Seriously limits" means an individual has some functional vision (with or without visual aids) that is used by the individual in performing such functions as mobility, communication, self-care, interpersonal skills, self-direction, work tolerance, or work skills and the individual has not acquired the adaptive skills to compensate for the limited functional vision.

"Significant visual impairment" means vision worse than 20/70 in the better eye with correction or a field of vision restricted to less than 70 degrees in the better eye.

"Supported employment" means (i) competitive work in an integrated setting or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability, and who, because of the nature and severity of their disabilities, need intensive supported employment services from DBVI and extended services after transition to perform this work or (ii) transitional employment for individuals with the most significant disabilities due to mental illness.

"Transition services" means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, and integrated employment (including supported employment), continuing adult education, adult services, independent living, or community participation.

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

"Vocational rehabilitation services" or "services" means goods and services that are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice as described in 22VAC45-51-70 and 34 CFR 361.48.

"Work adjustment training" means a training process utilizing individual and group work or work-related activities to assist individuals in understanding the meaning, value, and demands of work; to modify or develop attitudes, personal characteristics, and work behavior; and to develop functional capacities, as required, in order to assist individuals toward their optimum level of vocational development.

22VAC45-51-20. Protection, use, and release of personal information (34 CFR 361.38).

A. General provisions. DBVI shall safeguard the confidentiality of all personal information, including photographs and lists of names to ensure that:

1. Current and stored personal information is protected;

2. All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

3. All applicants or their representatives are informed about DBVI's need to collect personal information and the policies governing its use including:

a. The purposes for which DBVI intends to use or release the information;

b. An explanation of whether providing requested information is mandatory or voluntary and the effects of not providing requested information;

c. Identification of those situations in which DBVI requires or does not require the informed written consent of the individual before information may be released; and

d. Identification of other agencies to which information is routinely released; and

4. An explanation of DBVI policies and procedures affecting personal information shall be provided to each individual in that individual's native language or through the appropriate mode of communication.

B. All personal information in the possession of DBVI shall be used only for the purposes directly connected with the administration of the DBVI vocational rehabilitation program. Information containing identifiable personal information shall not be shared with advisory or other bodies that do not have official responsibility for the administration of the program. In the administration of the program, DBVI may obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further disclosed except as described in subsection A of this section.

C. Release to applicants and eligible individuals.

1. When requested in writing, DBVI shall make all requested information in that individual's record of vocational rehabilitation services accessible to and shall release the information to the individual or the individual's representative promptly.

2. Medical, psychological, or other information that DBVI determines may be harmful to the individual shall not be released directly to the individual but shall be provided to the individual through a third party chosen by the individual, which may include an advocate, family member, or medical or mental health professional. If a representative has been appointed by a court to represent the individual, the information shall be released to the court-appointed representative.

3. Personal information obtained by DBVI from another agency or organization may be released only by, or under conditions established by, the other agency or organization.

D. Release for audit, evaluation, and research. DBVI may release personal information to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that:

1. The information shall be used only for the purposes for which it is being provided;

2. The information shall be released only to persons officially connected with the audit, evaluation, or research;

3. The information shall not be released to the involved individual;

4. The information shall be managed in a manner to safeguard confidentiality; and

5. The final product shall not reveal any identifying personal information without the informed written consent of the involved individual or the individual's representative.

E. Release to other programs or authorities.

1. Upon written consent of the individual or, if appropriate, the individual's representative, DBVI shall release personal information to another agency or organization for its program purposes only to the extent that the information shall be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information is necessary for its program.

2. Medical or psychological information that DBVI determines may be harmful to the individual shall be released if the other agency or organization assures DBVI that the information shall be used only for the purpose for which it is being provided and that it shall not be further released to the individual.

F. DBVI shall release any personal information required by federal and state laws or regulations.

G. DBVI shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

H. DBVI shall also release personal information in order to protect the individual or others if the individual poses a threat to his safety or to the safety of others.

I. DBVI shall release to the Governor or his designee a complete and certified copy of the case record including transcripts of a fair hearing decision for the purpose of the Governor's review of an impartial hearing officer's final decision when one of the parties to a fair hearing requests a review.

22VAC45-51-30. Processing referrals and application.

A. DBVI has established and implemented standards for the prompt and equitable handling of applications of individuals for vocational rehabilitation services. These standards include timelines for making good faith efforts to inform individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

1. An individual shall be considered to have submitted an application for vocational rehabilitation services from DBVI when the individual or the individual's representative, as appropriate:

a. Has completed and signed a DBVI vocational rehabilitation services application form, which is available at the six DBVI regional offices, DBVI Headquarters, and on the DBVI website;

b. Has completed a common intake application form in a one-stop center requesting vocational rehabilitation services; or

c. Has otherwise requested vocational rehabilitation services from DBVI; and

2. Has provided to DBVI information necessary to initiate an assessment to determine eligibility and priority for vocational rehabilitation services; and

3. Is available to complete the assessment process.

B. Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers established under § 121 of the Workforce Innovation and Opportunity Act of 2014, an eligibility determination shall be made within 60 days, unless (i) exceptional and unforeseen circumstances beyond the control of DBVI preclude making a determination within 60 days, and DBVI and the individual agree to a specific extension of time or (ii) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with 22VAC45-51-40 or, if appropriate, an extended evaluation is necessary.

22VAC45-51-40. Eligibility for vocational rehabilitation services.

A. The DBVI Vocational Rehabilitation Program shall serve only individuals who are blind or who have significant visual impairment and have attained the age of 14 years. DBVI and the Virginia Department for Aging and Rehabilitative Services shall identify client populations served by each agency through a cooperative agreement.

B. Any qualified applicant residing in Virginia shall be served by the DBVI Vocational Rehabilitation Program. Services may be provided to otherwise qualified non-U.S. citizens who can produce a permanent or working visa, or their green card registration number. Copies of these documents shall be retained in the applicant's case service record.

C. DBVI shall conduct an initial assessment to determine whether an applicant is eligible for vocational rehabilitation services and to determine the individual's priority under an order of selection for services if DBVI is operating under an order of selection pursuant to 22VAC45-51-60. The initial assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice. The applicant for vocational rehabilitation services may use a qualified service provider of his choice in obtaining necessary assessments to determine eligibility for services and priority for services.

D. Qualified applicants shall be assessed as meeting the following eligibility criteria to receive vocational rehabilitation services from DBVI:

1. The applicant shall meet the criteria of being blind or visually impaired through one or more of the following:

a. The individual has a visual impairment that results in functional limitations related to obtaining, regaining, or maintaining employment and causes the individual to require the specialized services available through DBVI;

b. The individual has a rapidly progressive eye condition that, in the opinion of a qualified ophthalmologist, will cause the individual to experience functional limitations related to obtaining, regaining, or maintaining employment and causes the individual to require the specialized services available through DBVI, or

c. The individual is in a situation where eye treatment or surgery, or both, are recommended and there are functional limitations in performing employment duties.

2. The individual's blindness or visual impairment shall constitute or result in a substantial impediment to employment.

3. The individual shall require vocational rehabilitation services to prepare for, secure, retain, or regain employment.

4. The individual shall be able to benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

E. Applicants who are unemployed, underemployed, or in unstable employment as determined by the DBVI vocational rehabilitation counselor meet the requirement that there exists a substantial impediment to employment.

F. A beneficiary of social security benefits due to blindness under Title II or XVI of the Social Security Act shall be presumed eligible for DBVI vocational rehabilitation services under subsection D of this section provided the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual.

G. Vocational rehabilitation services shall not be provided to a potentially eligible individual on the basis of an interim determination of eligibility.

22VAC45-51-50. Comprehensive assessment of qualifications for individualized plans of employment.

Once it is determined that an individual is eligible for DBVI vocational rehabilitation services, to the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment shall be conducted to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the individual. This comprehensive assessment:

1. Shall be limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual.

2. Shall be used as a primary source of information to the maximum extent possible, as appropriate, and in accordance with confidentiality requirements may include:

a. Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection for the individual; and

b. Information that can be provided by the individual and, if appropriate, by the family of the individual.

3. May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitude, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual.

4. May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and vocational rehabilitation services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in a real job situation to assess and develop the capacities of the individual to perform adequately in a work environment.

5. May include referral for the provision of rehabilitation technology services to the individual to assess and develop the capacities of the individual to perform in a work environment.

6. May include an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

22VAC45-51-60. Order of selection for services.

A. When DBVI is unable to serve all potentially eligible individuals due to insufficient funds, an order of selection for vocational rehabilitation services shall be implemented. The order of selection shall consist of a group of categories that designate who shall be served first based on:

1. The individual's blindness or visual impairment including secondary disabling conditions;

2. Whether the individual's blindness or visual impairment profoundly or significantly limits one or more life activities such as mobility, communication, self-care, interpersonal skills, self-direction, work tolerance, or work skills in terms of achieving an employment outcome; and

3. The number of vocational rehabilitation services required over an extended period of time.

B. When an order of selection must be instituted, DBVI shall:

1. Consult with the State Rehabilitation Council for the Blind and Vision Impaired regarding (i) the need to establish an order of selection, (ii) establishment of categories in the order of selection, (iii) establishment of criteria for each category, and (iv) administration of the order of selection;

2. Conduct a public hearing prior to implementation of the order of selection;

3. Continue to provide services to all individuals currently receiving services under an individualized plan for employment;

4. Provide assessment services to determine eligibility for individuals who apply for services;

5. Provide referral services to individuals who apply for services;

6. Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order; and

7. Assure that:

a. Individuals with the most significant disabilities shall be selected first for the provision of vocational rehabilitation services; and

b. Individuals who do not meet the criteria for the categories being served shall have access to services provided through the information and referral system.

22VAC45-51-70. Scope of vocational rehabilitation services for individuals who are blind or vision impaired.

The following vocational rehabilitation services shall be available to assist individuals who are blind or visually impaired in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

1. An initial assessment for determining eligibility and priority for vocational rehabilitation services conducted by a DBVI vocational rehabilitation counselor, including, if appropriate, an initial assessment in rehabilitation technology;

2. A comprehensive assessment for determining vocational rehabilitation needs conducted by a DBVI vocational rehabilitation counselor, including, if appropriate, an assessment by other DBVI staff skilled in rehabilitation technology;

3. Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice;

4. Referrals and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system and to advise those individuals about the client assistance program established within the disAbility Law Center of Virginia;

5. Physical and mental restoration services, to the extent that financial support is not readily available from a source other than DBVI, such as through health insurance or other comparable services and benefits;

6. Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except for training or training services in an institution of higher education (i.e., universities, colleges, community colleges, junior colleges, vocational schools, technical institutes, or hospital schools of nursing), that may be paid for with funds under this chapter only if maximum efforts have been made by DBVI and the individual to secure grant assistance in whole or in part from other sources to pay for that training and they are not available;

7. Maintenance, as defined in 22VAC45-51-10;

8. Transition services, which are a coordinated set of activities based on the individual student's needs, taking into account the student's preferences and interests, and including instruction, community experiences, development of employment and other post-secondary adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment (34 CFR 361.5(b)(55));

9. Transportation, as defined in 22VAC45-51-10;

10. Vocational rehabilitation services to family members as defined in 22VAC45-51-10 if necessary to enable the applicant or eligible individual to achieve an employment outcome;

11. Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deafblind;

12. Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind;

13. Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

14. Supported employment services as defined in 22VAC45-51-10;

15. Personal assistance services as defined in 22VAC45-51-10;

16. Post-employment services as defined in 22VAC45-51-10;

17. Occupational licenses, tools, equipment, initial stocks, and supplies;

18. Rehabilitation technology as defined in 22VAC45-51-10 including vehicular modification, telecommunications, sensory, and other technology aids and services;

19. Transition services as defined in 22VAC45-51-10;

20. Technical assistance and other consultation services to conduct market analyses and develop business plans for individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and

21. Other goods and services determined necessary for the individual who is blind or visually impaired to achieve an employment outcome.

22VAC45-51-80. Development of the individualized plan for employment.

A. General requirements.

1. As described in 22VAC45-51-50, DBVI shall conduct an assessment for determining vocational rehabilitation

needs, if appropriate, for each eligible individual, or if DBVI is operating under an order of selection, for each eligible individual to whom DBVI is able to provide vocational rehabilitation services. The purpose of the assessment is to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

2. The IPE shall be developed and implemented within 90 days for each individual determined eligible for vocational rehabilitation services, or if DBVI is operating under an order of selection, for each eligible individual to whom DBVI is able to provide vocational rehabilitation services. DBVI shall take into consideration the needs of the individual and if an IPE cannot be developed within 90 days because a vocational goal cannot yet be established, DBVI and the individual shall agree upon an extension.

3. Vocational rehabilitation services shall be provided in accordance with the provisions of the IPE.

4. The IPE shall:

a. Be designed to achieve the specific employment outcome selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

b. To the maximum extent appropriate, result in employment in an integrated setting.

B. Required information. DBVI shall provide information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative, including:

1. Available options for developing the IPE, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE:

a. Without assistance from DBVI or other entity; or

b. With assistance from:

(1) A DBVI vocational rehabilitation counselor;

(2) A vocational rehabilitation counselor who is not employed by DBVI; and

(3) Resources other than those in subdivisions 1 b (1) and 1 b (2) of this subsection.

2. Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the IPE, including:

a. Information describing the full range of components that shall be included in an IPE;

b. As appropriate to each eligible individual:

(1) An explanation of DBVI guidelines and criteria for determining an eligible individual's financial commitments under an IPE;

(2) Information on the availability of assistance in completing DBVI forms required as a part of the IPE; and

(3) Additional information that the eligible individual requests or DBVI determines to be necessary to the development of the IPE.

c. A description of the rights and remedies available to the individual including recourse to the processes for review of DBVI determinations described in 22VAC45-51-140; and

d. A description of availability of the client assistance program within the disAbility Law Center of Virginia and information on how to contact that office.

C. IPE requirements:

1. The IPE shall be a written document prepared on forms provided by DBVI.

2. The IPE shall be developed and implemented in a manner that gives individuals the opportunity to exercise informed choice in selecting:

a. The employment outcome, including the employment setting;

b. The specific vocational rehabilitation services to achieve the employment outcome, including the settings in which vocational rehabilitation services will be provided;

c. The entity or entities that will provide the vocational rehabilitation services; and

d. The methods available for procuring the vocational rehabilitation services.

3. The IPE shall be:

a. Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

b. Approved and signed by a DBVI vocational rehabilitation counselor.

4. DBVI shall provide a copy of the IPE and a copy of amendments to the IPE to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative.

5. The IPE shall be reviewed at least annually by a DBVI vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome.

6. The IPE shall be amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a DBVI vocational rehabilitation counselor (to the extent determined to be appropriate by the individual) if there are substantive changes in the employment outcome, the vocational

rehabilitation services to be provided, or the providers of the vocational rehabilitation services.

7. Amendments to the IPE shall not take effect until agreed to and signed by the individual or, as appropriate, the individual's representative and by a DBVI vocational rehabilitation counselor.

8. The IPE for a student with a disability who is receiving special education services shall be developed:

a. In consideration of the student's individualized education plan; and

b. In accordance with the plans, policies, procedures, and terms of the interagency agreement between DBVI and the Virginia Department of Education designed to facilitate the transition of students who are blind or vision impaired from school to the receipt of vocational rehabilitation services.

9. Content of the IPE. Each IPE shall include:

a. A description of the specific employment outcome chosen by the eligible individual that is:

(1) Consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice; and

(2) To the maximum extent appropriate, results in employment in an integrated setting.

b. A description of the specific vocational rehabilitation services under 22VAC45-51-70 that are:

(1) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training and management of those services; and

(2) Provided in the most integrated setting that is appropriate for the vocational rehabilitation services involved and is consistent with the informed choice of the eligible individual.

c. Timelines for the achievement of the employment outcome and for the initiation of vocational rehabilitation services.

d. A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that shall provide the vocational rehabilitation services and the methods used to procure those vocational rehabilitation services.

e. A description of the criteria used to evaluate progress toward achievement of the employment outcome.

f. The terms and conditions of the IPE, including, as appropriate, information describing:

(1) The responsibilities of DBVI;

(2) The responsibilities of the eligible individual, including:

(a) The responsibilities the individual shall assume in relation to achieving the employment outcome;

(b) If applicable, the extent of the individual's participation in paying for the cost of vocational rehabilitation services; and

(c) The responsibility of the individual with regard to applying for and securing comparable services and benefits as defined in 22VAC45-51-10; and

(3) The services received by the individual from other comparable services and benefits as defined in 22VAC45-51-10.

10. Post-employment services. The IPE for each individual shall contain, as determined to be necessary, statements concerning:

a. The expected need for post-employment services prior to closing the record of vocational rehabilitation services of an individual who has achieved an employment outcome;

b. A description of the terms and conditions for the provision of any post-employment service; and

c. If appropriate, a statement of how post-employment services shall be provided or arranged through other comparable services and benefits as defined in 22VAC45-51-10.

22VAC45-51-90. Provision of services for individuals who are blind or visually impaired.

The provision of vocational rehabilitation services shall be based on the rehabilitation needs of each individual as identified in that individual's IPE and shall be consistent with the individual's informed choice. DBVI shall not place arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome:

1. In-state vocational rehabilitation services shall be preferred provided that the preference does not effectively deny an individual a necessary vocational rehabilitation service. If the individual chooses an out-of-state vocational rehabilitation service at a higher cost than an in-state vocational rehabilitation service and if either vocational rehabilitation service would meet the individual's rehabilitation needs, DBVI shall not be responsible for those costs in excess of the cost of the in-state vocational rehabilitation service.

2. DBVI shall maintain written policies governing the rates of payment for all purchased vocational rehabilitation services.

3. DBVI shall maintain a fee schedule designed to ensure a reasonable cost to the program for each vocational rehabilitation service that is not so low as to effectively deny an individual a necessary vocational rehabilitation service and not absolute and permits exceptions so that individual needs can be addressed.

4. DBVI shall not place absolute dollar limits on specific vocational rehabilitation service categories or on the total vocational rehabilitation services provided to an individual.

5. DBVI shall not establish absolute time limits on the provision of specific vocational rehabilitation services or on the provision of vocational rehabilitation services to an individual. The duration of each vocational rehabilitation service needed by an individual shall be determined on an individual basis and reflected in that individual's IPE.

6. DBVI shall authorize vocational rehabilitation services in a timely manner.

7. Written authorizations shall be made either before or at the same time as the purchase of vocational rehabilitation services. An oral authorization may be given in an emergency situation, and the nature of the emergency, the specific authorization given, and the manner in which the authorization was made shall be documented in the individual's case file, and the authorization shall be confirmed in writing and forwarded to the provider of vocational rehabilitation services.

22VAC45-51-100. Participation of individuals in the cost of services based on financial need.

A. Individuals shall be required to participate in the costs of vocational rehabilitation services listed in subsection F of this section provided by DBVI based on financial need. DBVI shall consider certain factors in order to determine the financial needs of individuals applying for and receiving DBVI vocational rehabilitation services.

B. DBVI shall consider an individual's financial need based on certain allowances and exclusions including:

1. The individual's gross income. DBVI shall use a uniform income level including normal living requirements based on the median income for a four-person family provided by the Bureau of the Census as published in the Federal Register (45 CFR 96.85) for the Low Income Home Energy Assistance Program (LIHEAP). The individual's financial need shall be based on 100% of the federal estimated median income in Virginia, which is published annually in the Federal Register;

2. The individual's income or a portion of the individual's income based on family size;

3. The estimated cost of the individual's vocational rehabilitation services specifically related to the individual's disability and not covered by comparable services and benefits; and

4. The tuition costs for the individual or a family member to attend a private or public educational facility.

C. DBVI shall consider the financial needs of eligible individuals using the following income:

1. Annual taxable income (gross income);

2. Annual nontaxable income such as social security benefits, veterans' benefits, retirement benefits, and workers' compensation benefits;

3. Total cash assets, including checking and savings accounts, certificates, stocks, and bonds. DBVI shall maintain Exemptions for Liquid Assets table; and

4. Income from real property.

D. Annually, DBVI shall make a determination of the financial contribution of the individual resulting from an examination of (i) the number of persons in the family unit; (ii) annual taxable income minus allowances; and (iii) exclusions based on individual costs for medical or educational services specifically related to the individual's disability.

E. Individuals with disabilities receiving social security benefits under Title II or XVI of the Social Security Act are exempt from consideration of financial need for vocational rehabilitation services.

F. DBVI shall consider the financial need of eligible individuals who receive the following vocational rehabilitation services:

1. Tuition for college or other training;

2. Medical treatment and physical restoration services;

3. Books and supplies;

4. Services to members of an eligible individual's family when necessary to the vocational rehabilitation of the eligible individual;

5. Occupational licenses, tools, equipment, and initial stock and supplies;

6. Maintenance, as defined in 22VAC45-51-10, during training;

7. Personal incidentals during training;

8. Telecommunications, sensory, and other technological aids and devices when such aids and equipment are not used as adaptive devices for vocational training or employment or both;

9. Transportation; and

10. Rehabilitation engineering services when not incidental to the evaluation of rehabilitation potential.

22VAC45-51-110. Participation of individuals in use of comparable services and benefits.

A. Prior to providing any vocational rehabilitation services to an eligible individual, or to members of the individual's family, DBVI shall determine whether comparable services and benefits, as defined in 22VAC45-51-10, exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay the following:

1. The progress of the individual toward achieving the employment outcome identified in the IPE;

2. An immediate job placement; or

3. The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

B. The following vocational rehabilitation services shall be exempt from a determination of the availability of comparable services and benefits and financial need consideration:

1. Assessment for determination of eligibility and vocational rehabilitation needs and priority of vocational rehabilitation services;

2. Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

3 Referral and other services to secure needed services from other agencies;

4. Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

5. Post-employment services consisting of services listed under subdivisions 1 through 4 of this subsection;

6. Reader service for eligible individuals enrolled in college or in a vocational training program;

7. Adjustment training and evaluations provided at the Virginia Rehabilitation Center for the Blind and Vision Impaired in Richmond;

8. Prevocational adjustment training, such as rehabilitation teaching, provided to eligible individuals receiving vocational rehabilitation services from DBVI staff;

9. Interpreter services for eligible individuals who are deafblind;

10. Orientation and mobility training;

11. Summer work experience for high school and college students;

12. Work evaluation up to 30 days;

13. Community evaluation training program with rehabilitation teaching;

14. Work experience for adults up to three months;

15. Work adjustment training up to three months;

16. On-the-job training up to 30 days;

17. Supported employment services; and

18. Personal assistance services.

C. If comparable services and benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, DBVI shall use those comparable services and benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

D. If comparable services and benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, DBVI shall provide vocational rehabilitation services until those comparable services and benefits become available.

22VAC45-51-120. Periodic review of ineligibility determinations.

When DBVI determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving vocational rehabilitation services under an IPE is no longer eligible for vocational rehabilitation services, DBVI shall:

1. Make a determination of ineligibility only after providing the individual, or as appropriate, the individual's representative, with an opportunity for full consultation;

2. Inform the individual in writing, supplemented as necessary by other modes of communication consistent with the informed choice of the individual, of the ineligibility determination including reasons for that determination;

3. Inform the individual in writing, supplemented as necessary by other modes of communication consistent with the informed choice of the individual, the means by which the individual may express and seek remedy for dissatisfaction, including the procedures for review of determinations by DBVI;

4. Provide the individual with a description of services available from the client assistance program established in the disAbility Law Center of Virginia; and

5. Within 12 months of the ineligibility determination and annually thereafter if requested by the individual or, if appropriate, by the individual's representative, review any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

22VAC45-51-130. Periodic review of extended employment.

DBVI shall annually review and reevaluate the status of each individual with a disability who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with § 14(c) of the Fair Labor Standards Act and 29 CFR Part 525 for two years after the individual achieves the employment outcome (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment.

22VAC45-51-140. Review of determinations made by DBVI.

A. An applicant or eligible individual who is dissatisfied with any determination made by DBVI that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination.

B. General requirements.

1. Notification. DBVI shall provide the applicant, or eligible individual or, as appropriate, the individual's representative, notice of:

a. His right to obtain review of DBVI determinations that affect the provision of vocational rehabilitation through an impartial due process hearing conducted by an impartial hearing officer;

b. His right to informal dispute resolution;

c. His right to pursue mediation with respect to determinations made by DBVI that affect the provision of vocational rehabilitation services to the applicant or eligible individual conducted by an impartial certified mediator;

d. The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

e. The manner in which a mediator or impartial hearing officer may be selected; and

f. The availability of the client assistance program, established in the disAbility Law Center of Virginia, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

2. Timing. DBVI shall provide notice of the review process:

a. At the time the individual applies for vocational rehabilitation services;

b. At the time the individual is assigned to a category in DBVI's order of selection;

c. At the time the IPE is developed; and

d. Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

3. DBVI shall not suspend, reduce, or terminate vocational rehabilitation services provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a decision by a hearing officer, mediator, or informal resolution unless:

a. The individual or, in appropriate cases, the individual's representative, requests a suspension, reduction, or termination of services; or

b. DBVI has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

C. Informal dispute resolution.

1. DBVI maintains a two-step informal dispute resolution process that is available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual's representative, requests an impartial due process hearing under this section.

a. Step 1. If an individual has a complaint or grievance that cannot be resolved in conversation with the DBVI employee, the individual must prepare a written grievance on a grievance form obtainable from DBVI. The grievance form is submitted by the individual to the DBVI employee and the employee's supervisor. The supervisor shall meet with the individual, and as requested, the individual's representative, within a reasonable time not to exceed two weeks of DBVI's receipt of the grievance form. The supervisor shall work with the individual to reach a mutually satisfactory solution to the grievance.

b. Step 2. If the individual's grievance is not resolved in Step 1, the individual may request a meeting with the Deputy Commissioner of DBVI. This request shall be made in writing to the deputy commissioner within two weeks of the Step 1 decision. The deputy commissioner shall meet with the individual and, as requested, the individual's representative within five full working days of receipt of the Step 2 request. The deputy commissioner shall reply in writing to the individual within three full working days following the Step 2 meeting. In the event that the individual's complaint involves the supervisor, the deputy commissioner shall handle the Step 1 meeting, and the commissioner shall handle the Step 2 meeting.

c. Steps 1 and 2 may be conducted in person or by telephone.

2. Participation in the informal dispute resolution process shall be voluntary on the part of the applicant or eligible individual and on the part of DBVI.

3. The informal dispute resolution process shall not be used to deny the right of an applicant or eligible individual to a hearing, including the right to pursue mediation.

4. If informal dispute resolution is not successful in resolving the dispute, a formal hearing shall be conducted within 60 days of the applicant's or eligible individual's request for review of a determination made by DBVI, unless DBVI and the individual agree to a specific extension of time.

D. Mediation.

1. A mediation process shall be made available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

2. Participation in the mediation process shall be voluntary on the part of the applicant or eligible individual and on the part of DBVI.

3. Use of the mediation process shall not be used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in subsection E of this section.

4. The mediation process shall be conducted by a qualified and impartial mediator who shall be selected from a list of qualified and impartial mediators maintained by DBVI.

5. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing.

6. The applicant or eligible individual or, as appropriate, the individual's representative shall have the opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or eligible individual's position.

7. The applicant or eligible individual may be represented during mediation sessions or due process hearings by counsel or other advocates selected by the applicant or eligible individual.

E. Formal due process hearings.

1. If the individual is not satisfied with decisions made during the informal resolution process or through mediation, he may proceed to a formal due process hearing by making a request in writing to the DBVI Vocational Rehabilitation Director.

2. The formal due process hearing shall be conducted by an impartial hearing officer within 60 days of the applicant's or eligible individual's request for review of a determination made by DBVI unless informal resolution or a mediation agreement achieves resolution prior to the 60th day or the parties agree to a specific extension of time.

3. DBVI shall randomly select the impartial hearing officer from a list of qualified hearing officers identified jointly by the State Rehabilitation Council for the Blind and Vision Impaired and the Department for Aging and Rehabilitative Services.

4. The hearing officer shall conduct the formal due process hearing in accordance with this section and federal vocational rehabilitation regulations.

5. In addition to the rights described in this section, the applicant or eligible individual or, if appropriate, the individual's representative shall be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence.

6. The applicant or eligible individual or, as appropriate, the individual's representative shall have the opportunity to submit during the formal due process hearings evidence and other information that supports the applicant's or eligible individual's position.

7. The applicant or eligible individual may be represented during the formal due process hearings by counsel or other advocates selected by the applicant or eligible individual.

8. Conduct of the formal due process hearing:

a. The hearing officer shall determine the proprietary of attendance at the hearing of those individuals not having a direct interest in the hearing.

b. The hearing officer may, at the beginning of the hearing, ask for statements clarifying the issues involved.

c. Exhibits offered by the applicant or eligible individual may be received by the hearing officer; when received, the exhibits shall be marked and made part of the record.

d. The applicant or eligible individual and his representative and the DBVI employee shall then present claims, proof, and witnesses who shall submit to questions or other examinations. The hearing officer, at his discretion, may vary this procedure but shall present full opportunity to all parties and witnesses for presentation of any material or relevant proof.

e. The parties shall produce such additional evidence as the hearing officer may deem necessary to reach an understanding or determination of the dispute. The hearing officer shall be the judge of relevancy or materiality of the evidence presented in the case. All evidence shall be taken in the presence of the parties.

f. After all evidence has been presented, the hearing officer shall declare the hearing closed.

9. At the conclusion of the formal hearing, the hearing officer shall issue a written decision of his findings of fact and conclusions of law within 30 days of the completion of the formal hearing.

10. The hearing officer's decision shall be a final decision, and the applicant or eligible individual may appeal the hearing officer's decision to a representative from the Governor's office within 20 days of the mailing of the impartial hearing officer's decision.

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 (22VAC45-51)

Application for Vocational Rehabilitation Services, DBVI-04-01 (rev. 4/2014)

Consent to Release Confidential Information for Alcohol or Drug Patients, DBVI-70-22 (rev. 10/2015)

Consent to Release Health Information, DBVI-70-23 (rev. 10/2015)

Consent to Release Personal Information, DBVI-70-29 (rev. 10/2015)

Eye Exam Report, DBVI-70-20E (rev. 7/2014)

Financial Determination/Redetermination Statement Form, DBVI-70-06 (rev. 9/2014)

Health Checklist/General Medical Examination, DBVI-70-04 (rev. 6/2014)

Individualized Plan for Employment Form (eff. 12/2015)

Individualized Plan for Employment Planned Services Form (rev. 12/2015)

Service Complaint/Grievance Form, DBVI-70-01 (rev. 9/2013)

VA.R. Doc. No. R09-1168; Filed December 15, 2015, 4:15 p.m.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each 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.

18VAC10-11, Public Participation Guidelines

18VAC10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations

The comment period begins January 11, 2016, and ends February 1, 2016.

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.

Contact Information: Kathleen R. Nosbisch, Executive Director, Department of Professional Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email apelscidla@dpor.virginia.gov.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Professional and Occupational Regulation is conducting a periodic review and small business impact review of **18VAC120-40, Virginia Professional Boxing and Wrestling Event Regulations**.

The review of this regulation will be guided by the principles in Executive Order 17 (2014).

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 January 11, 2016, and ends February 1, 2016.

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 Kathleen R. Nosbisch, Executive Director, Department of Professional Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email boxing@dpor.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE WATER CONTROL BOARD

Total Maximum Daily Load for Hardware River Watershed

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan (IP) for the Hardware River watershed (North Fork Hardware and Hardware Rivers) in Albemarle and Fluvanna Counties. The North Fork Hardware River and the Hardware River were first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2006. The creeks have remained on the § 303(d) list for these impairments since then.

The impaired segment of the North Fork Hardware River extends 10.42 miles from the headwaters downstream to its confluence with the South Fork Hardware River. The impaired segment of Hardware River extends 23.03 miles

from its confluence with the North Fork downstream to its confluence with the James 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 expeditious implementation of total maximum daily loads when appropriate. 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. DEQ completed bacteria TMDLs for the Hardware River and the North Fork in July 2007. The TMDLs were approved by the Environmental Protection Agency on April 10, 2008. The TMDL report is available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx. The TMDLs were modified in 2015 to correct a series of modeling errors. The draft revised TMDL report is available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

Development of the Hardware River TMDL Implementation Plan began in March 2015.

The Virginia Department of Environmental Quality will host a public meeting on the development of this TMDL implementation plan on January 12, 2016, from 7 p.m. to 8:30 p.m. at Walton Middle School, 4217 Red Hill Road, Charlottesville, VA. The meeting will include refreshments from the Crust and Crumb Bakery in Scottsville, sponsored by the Fluvanna County Farm Bureau. On January 13, 2016, the implementation plan will be available for public comment on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx.

In the event of inclement weather, the meeting will be postponed until Tuesday, January 19, but will still be held at the same time and location. If schools are closed on January 12, then the meeting will be postponed. If inclement weather begins after schools let out for the day, please call Nesha McRae at (540) 574-7850 to determine whether the meeting will be held as scheduled.

The public comment period for the implementation plan will end on February 11, 2016. 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 emailed to nesha.mcrae@deq.virginia.gov.

Total Maximum Daily Load for West, Stephens, and Crooked Runs Watersheds

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 (IP) for the West, Stephens, and Crooked Runs watersheds in Frederick, Warren, and Clarke Counties. West and Stephens Runs were first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2010, while Crooked Run was listed in 2002. The creeks have remained on the § 303(d) list for these impairments since then.

The impaired segment of West Run extends 6.12 miles from its headwaters downstream to its confluence with Crooked Run. The impaired segment of Stephens Run extends 0.95 miles from its confluence with an unnamed tributary to its confluence with Crooked Run. The impaired segment of Crooked Run extends 8.87 miles down from the Lake Frederick dam to its confluence with the Shenandoah River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires expeditious implementation of total maximum daily loads when appropriate. 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. DEQ completed bacteria TMDLs for the Crooked, Stephens, and West Runs in September 2014. The TMDLs were submitted to the Environmental Protection Agency for approval November of 2015. The draft TMDL report is available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

The Virginia Department of Environmental Quality will host a public meeting to initiate the development of a TMDL Implementation Plan for Crooked, Stephens, and West Runs. The meeting will be held on Thursday, January 28, 2016, at 6:30 p.m. at the Lord Fairfax Community College's Carl and Emily Thompson Conference Center, 173 Skirmisher Lane, Middletown, VA. For driving directions, please visit http://www.lfcc.edu/about-lfcc/locations/middletown-campus/. In the event of inclement weather, the meeting will be postponed until February 3, 2016, to be held at the same time and location. Please call the number provided below to confirm postponement of the meeting.

A 30-day public comment period for the meeting will begin January 29, 2016, and end February 29, 2016. 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 emailed to nesha.mcrae@deq.virginia.gov.

Proposed Enforcement Action for Fannon Petroleum Services, Inc. and Wharton Supply Inc.

An enforcement action has been proposed for Fannon Petroleum Services, Inc. and Wharton Supply Inc. of Virginia for violations in Fairfax County. The order resolves violations of State Water Control Law stemming from the unauthorized discharge of oil. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from January 12, 2016, through February 11, 2016.

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; *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 FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.**

Publication: 32:6 VA.R. 1057-1100 November 16, 2015.

Correction to Final Regulation:

Page 1066, subdivision 2 of 18VAC10-20-220, line 5, after "licensed in" unstrike "~~a~~" and delete "another"

Page 1066, subdivision 3 of 18VAC10-20-220, line 5, after "in" unstrike "~~a~~" and delete "another"

VA.R. Doc. No.R11-2357; Filed December 17, 2015, 2:21 p.m.